



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.


About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

UC-NRLF



B 4 288 100



For Not To Be Taken
From the Room
reference

DIGEST OF DECISIONS
IN
THE COURTS OF LAST RESORT
OF THE
SEVERAL STATES
CONTAINED IN
THE AMERICAN REPORTS,
FROM
VOLUMES I TO XII, INCLUSIVE.
BY
ISAAC GRANT THOMPSON.
1870-1875.

ALBANY:
JOHN D. PARSONS, JR., PUBLISHER.
1875.

Entered, according to act of Congress, in the year eighteen hundred and seventy-five,

By JOHN D. PARSONS, JR.,

In the office of the Librarian of Congress, at Washington.

**WEED, PARSONS AND COMPANY,
PRINTERS AND STEREOTYPERS,
ALBANY, N. Y.**

SCHEDULE

OF STATE REPORTS FROM WHICH CASES HAVE BEEN SELECTED FOR THE AMERICAN REPORTS.

The volumes of State Reports are in parentheses, and the volumes of American Reports in heavy letter.

Alabama (44) 4; (45) 6; (46) 7; (47) 11.
Arkansas (25) 4; (26) 7; (27) 11.
Bush. (Ky.) (7) 8; (8) 8.
California (39) 2; (40) 6; (41, 42) 10.
Colorado (1) 9.
Connecticut (36) 4; (37, 38) 9; (39) 12.
Florida (13) 7.
Georgia (40) 2; (41, 42) 5; (43, 44) 9; (45, 46) 12.
Grattan (Va.) (20) 3; (21) 8; (22) 12.
Heiskell (Tenn.) (1) 2; (2) 5; (3) 8.
Houston (Del.) (3) 11.
Illinois (51) 2; (52) 4; (53, 54) 5; (55, 56) 8; (57, 58) 11.
Indiana (32) 2; (33) 5; (34) 7; (35) 9; (36, 37, 38) 10.
Iowa (27) 1; (28, 29) 4; (30) 6; (31, 32) 7; (33, 34) 11.
Kansas (5, 6) 7; (7, 8, 9) 12.
Louisiana (22) 2; (23) 8.
Maine (57) 2; (58) 4; (59) 8; (60) 11.
Maryland (31) 1; (32, 33) 3; (34, 35) 6; (36, 37) 11.
Massachusetts (100) 1; (101, 102) 3; (103) 4; (104) 6; (105) 7; (106) 8
(107) 9; (108) 11; (109) 12.
Michigan (19) 2; (20, 21) 4; (22) 7; (23, 24) 9; (25, 26) 12.
Minnesota (15) 2; (16, 17, 18) 10.
Mississippi (42) 2; (43) 5; (44, 45) 7; (46, 47, 48) 12.
Missouri (46) 2; (47) 4; (48, 49) 8; (50, 51) 11.
Nevada (6) 3; (7) 8.
New Hampshire (48) 2; (49) 6; (50) 9; (51) 12.
New Jersey (34) 3; (35) 10.
New York (41, 42) 1; (43) 3; (44) 4; (45) 6; (46, 47) 7; (48) 8; (49, 50,
51) 10; (52) 11.
North Carolina (65) 6; (66) 8; (67, 68, 69) 12.
Ohio (19) 2; (20) 5; (21) 8; (22) 10.
Oregon (3) 8.
Pennsylvania (62) 1; (63, 64, 65) 3; (66, 67) 5; (68, 69) 8; (70, 71) 10.
Rhode Island (8) 5; (9) 11.
South Carolina (1 N. S.) 7.
Texas (32) 5; (33, 34) 7.
Vermont (42) 1; (43) 5; (44) 8; (45) 12.
West Virginia (4) 6.
Wisconsin (24) 1; (25) 3; (26) 7; (27, 28, 29) 9; (30, 31) 11.

CASES

OVERRULED, DOUBTED, DENIED, ETC.

[The Roman numerals refer to the volumes of American Reports.]

- Adams v. Gay** (19 Vt. 358), denied; **Myers v. Meinrath** (101 Mass. 366), III, 370.
Alden v. New York Central Railroad Co. (26 N.Y. 102), denied; **Meier v. Pennsylvania R. R. Co.** (64 Penn St. 225), III, 581.
— explained and limited, **McPadden v. New York Central Railroad Co.** (44 N. Y. 478), IV, 706.
Ashton v. Atlantic Bank (3 Allen, 217), distinguished; **Shaw v. Spencer** (100 Mass. 382), I, 121.
Atlantic Ins. Co. v. Bird (2 Bosw. 196), distinguished; **Allen v. Mercantile Mut. Ins. Co.** (44 N. Y. 442), IV, 702.
Ballard v. Wiltshire (38 Ind. 341), limited; **Sinton v. Steamboat** (34 Ind. 448) VII, 230.
Barrett v. Tewksberry (9 Cal. 13), explained; **Love v. Watkins** (40 Cal. 547) VI, 630.
Barrett v. Warren (3 Hill, 350), disapproved; **Farley v. Lincoln** (51 N. H. 577), XI, 183.
Bartlett v. Cowles (15 Gray, 445), limited; **Bartlett v. Drake**, (100 Mass. 174), I, 102.
Bate v. Sale (43 Ill. 351), distinguished; **Robbins v. Bunn** (54 Ill. 48), V, 77.
Beardsley v. Hall (36 Conn. 270; 4 Am. R. 74), denied; **Way v. Howe** (108 Mass. 507), XI, 390.
Bennett v. Judson (21 N. Y. 238), criticised and questioned; **Wakeman v. Dalley** (51 N. Y. 83), XI, 551.
Bird v. Randall (3 Burr. 1845), explained; **Harding v. Townshend** (43 Vt. 586), V, 306.
Bissell v. The New York Central Railroad Co. (25 N. Y. 442), denied; **Cleveland, Painesville, etc., Railroad Co. v. Curran** (19 Ohio St. 1), II, 362.
Bishop v. Fahay (15 Gray, 61), distinguished; **Blair v. Forehand** (100 Mass. 136), I, 100.
Blake v. Midland Railway Co. (18 Q. B. 111), limited; **Johnson v. Wells, Fargo & Co.** (6 Nev. 224), III, 246.

- Blimm v. Commonwealth* (7 Bush. 320), overruled; *Shannahan v. Commonwealth* (8 Bush. 463), VIII, 471.
- Bosworth v. Swansey* (10 Met. 363), denied; *Sutton v. Wauwatosa* (39 Wis. 21) IX, 535.
- Breasted v. Farmers' Loan and Trust Co.* (4 N. Y. 299), denied; *Cooper v. Massachusetts Ins. Co.* (102 Mass. 229), III, 458.
- Brown v. Brown* (5 Gill, 249), distinguished; *J. G. v. H. G.* (33 Md. 401), III, 187.
- Brown v. Cattaraugus Ins. Co.* (18 N. Y. 387), denied; *North America Fire Ins. Co. v. Throop* (22 Mich. 146), VII, 644.
- Brown v. Chadbourne* (31 Me. 9), denied; *Hubbard v. Bell* (54 Ill. 110), V, 101.
- Brownell v. Winnie* (29 N. Y. 406), denied; *Wallace v. Jewell* (21 Ohio St. 163), VIII, 49.
- Brooks v. Mitchell* (9 Mees. & Wels. 15), considered; *Herrick v. Woolverton* (41 N. Y. 581), I, 466.
- Buckland v. Adams Express Co.* (97 Mass. 124), explained and distinguished; *Grace v. Adams* (100 Mass. 505), I, 184.
- Buckley v. Smith* (2 Duer, 261), criticised; *Shaul v. Brown* (28 Iowa, 87), IV, 157.
- Burk v. Phips* (1 Root, 487), criticised; *Matthewson v. Perry* (37 Conn. 435), IX, 341.
- Bush v. Steinman* (1 B. & P. 404), denied; *Cuff v. Newark, etc., Railroad Co.* (35 N. J. 17), X, 207.
- Cammell v. Sewell* (3 H. & N. 617); see *Clark v. Wilson* (103 Mass. 219), IV, 587.
- Cannan v. Bryce* (3 B. & Ald. 179), distinguished; *Hill v. Spear* (50 N. H. 253), IX, 222.
- Canning v. Williamstown* (1 Cush. 452), denied; *Johnson v. Wells* (6 Nev. 224), III, 248.
- Chamberlain v. Smith* (8 Wright, 431), explained and distinguished; 64 Penn. St. 499, III, 614.
- Cheever v. Wilson* (9 Wall. 108), distinguished; *People v. Dawell* (25 Mich. 247), XII, 271.
- Cecil Bank v. Snively* (23 Md. 253), distinguished; *Green v. Drummond* (31 Md. 71), I, 17.
- City of Ottawa v. The People* (43 Ill. 238), explained; *People v. Mayor of Chicago* (51 Ill. 17), II, 288.
- Clark v. Johnson* (54 Ill. 296), disapproved; *Briggs v. Ewarts* (51 Mo. 245), XI, 448.
- Clopton v. Bolton* (23 Miss. 78), denied; *Robinson v. Harbour* (42 Miss. 797), II, 673.
- Cole v. Saulhough* (48 Barb. 105), questioned; *Bowman v. Van Kuren* (39 Wis. 209), IX, 557.
- Collins v. Myers* (16 Ohio, 547), explained and limited; *Klein v. Kalzenberger* (20 Ohio St. 110), V, 631.
- Columbus Gas-light Company v. Freeland* (13 Ohio St. 392), explained and limited; *Tootle v. Clifton* (22 Ohio St. 247), X, 733.

- Comparet v. Ewing* (8 Black. [Ind.] 328), overruled; *Robbins v. Cheek* (32 Ind. 828), II, 849.
- Cook v. Babcock* (7 Cush. 526), distinguished; *Putnam v. Bond* (100 Mass. 58), I, 83.
- Cooper v. Hall* (5 Ohio, 820), explained and limited; *Tootle v. Clifton* (23 Ohio St. 247), X, 783.
- Corn Exchange Ins. Co. v. Babcock* (42 N. Y. 613, 1 Am. R. 601), criticised; *Deering v. Boyle* (8 Kan. 525), XII, 482.
- Cortelyou v. Lansing* (2 Cal. Cas. 200); see *Sturgis v. Keith* (57 Ill. 451), XI, 38.
- Crease v. Babcock* (23 Pick. 334), disapproved; *Flint, etc., Plankroad v. Woodhall* (25 Mich. 99), XII, 287.
- Crocker v. The New London, Willimantic & Palmer Railway Co.* (34 Conn. 249), denied; *Du Laurans v. The First Division of the St. Paul, etc., R. R. Co.* (15 Minn. 49), II, 106.
- Dana v. Tucker* (4 Johns. 487), doubted; *Woodward v. Leavitt* (107 Mass. 470), IX, 60.
- Davenport v. Ruckman* (37 N. Y. 568), denied; *Detroit v. Blakeby* (31 Mich. 84), IV, 455.
- Davidson v. Manlove* (3 Cold. 346), overruled; *Smith v. Brazelton* (1 Heisk. 44), II, 689.
- Dean v. Dean* (27 Vt. 746), limited; *Williams v. Robinson* (42 Vt. 658), I, 365.
- Denton v. Nanny* (8 Barb. 618), denied; *Newhall v. Lynn Savings Bank* (101 Mass. 432), III, 389.
- Doe v. Knight* (5 Barn. & Cress. 671), denied; *Pruitsman v. Baker* (30 Wis. 644), XI, 598.
- Downes v. Back* (1 Stark. 318), disapproved; *Sturges v. Keith* (57 Ill. 451), XI, 33.
- Doty v. Knox County Bank* (16 Ohio St. 183), modified; *Widoe v. Webb* (20 Ohio St. 431), V, 668.
- Dubuque County v. Dubuque & Pacific R. R. Co.* (4 G. Gr. 1), denied; *Hansen v. Vernon* (27 Iowa, 28), I, 215.
- Duke of Buccleuch v. Metropolitan Board of Works* (L. R., 5 Exch. 221), cited as an authority; *Stevens v. Paterson & Newark R. R. Co.* (34 N. J. 532), III, 275, was reversed by the House of Lords, L. R. 5 H. of L. 418; 2 Moak's Eng. R. 448.
- Dusenbury v. Ellis* (3 Johns. Cas. 70), denied; *Sheffield v. Ladue* (16 Minn. 868), X, 147.
- Dye v. Mann* (10 Mich. 291), denied; *Stout v. Folger* (34 Ill. 71), XI, 140.
- Dyett v. Pendlelin* (8 Conn. 727), questioned; *Boyce v. Guggenheim* (106 Mass. 201), VIII, 326.
- Edick v. Ranuer* (2 Johns. 423), denied; *Green v. Holway* (101 Mass. 243), III, 841.
- Ellis v. Telegraph Co.* (18 Allen, 226), limited; *Sweetland v. Ill. Tel. Co.* (27 Iowa, 433), I, 293.
- Elmer v. Pennel* (40 Me. 430), denied; *Nash v. Lull* (103 Mass. 63), III, 438.
- Elmore v. The Naugatuck R. R. Co.* (38 Conn. 457), limited; *Nashua Lock Co. v. The Worcester & C. R. R. Co.* (48 N. H. 339), II, 259.

- Ely v. N. H. St. Co.* (53 Barb. 207), overruled; *McAndrew v. Whitlock* (52 N. Y. 51), XI, 665.
- Erie & Northeast R. R. Co. v. Casey* (26 Penn. St. 287), denied; *Whitney v. Sheboygan & Fond du Lac R. R. Co.* (25 Wis. 167), III, 46.
- disapproved; *Flint, etc., Plankroad Co. v. Woodhull* (25 Mich. 99), XII, 287.
- Everett v. Gray* (1 Mass. 101), overruled; *Carey v. Guillo* (105 Mass. 18), VII, 495.
- Ferrill v. Simpson* (8 Pick. 359), denied; *Woodward v. Leavitt* (107 Mass. 465), IX, 55.
- Fillebrown v. Grand Trunk Railway* (55 Me. 462), distinguished; *Greene v. Adams* (100 Mass. 505), I, 135.
- First National Bank of Whitehall v. Lamb* (50 N. Y. 95, 10 Am. Rep. 428), denied; *First National Bank of Columbus v. Garlinghouse* (32 Ohio St. 492), X, 758.
- Fisher v. Clisbee* (12 Ill. 344), denied; *Wyckoff v. Queens Co. Ferry Co.* (53 N. Y. 34), XI, 652.
- Fitzgerald v. People* (37 N. Y. 418), denied; *Hogan v. State* (80 Wis. 428), XI, 578.
- Fletcher v. Ryland* (L. R. 8 H. L. 33), questioned; *Loosee v. Buchanan* (51 N. Y. 479), X, 623.
- Frazier v. Pennsylvania R. R. Co.* (38 Penn. St. 104), overruled; *Pittsburgh, etc., Ry. Co. v. Ruby* (88 Ind. 294), X, 114.
- Freeman v. Rawson* (5 Ohio St. 1), explained and limited; *Kleine v. Katzenberger* (20 Ohio St. 110), V, 681.
- French v. French* (3 N. H. 234), denied; *Trafton v. Hawes* (102 Mass. 537), III, 497.
- Frost v. Knight* (39 Law J. Rep. 227), cited in note to *Burtis v. Thompson*, I, 520, was reversed by the Exchequer Chamber, L. R. 7 Exch. 111.
- Gaylord v. Van Loan* (15 Wend. 308), limited; *Shapley v. Abbott* (42 N. Y. 448), I, 556.
- Gibbons v. Ogden* (9 Wheat. 1), considered; *Craig v. Kline* (65 Penn. St. 399), III, 641.
- Gordon v. Appeal Tax Cases* (3 How. [U. S.] 133), limited; *Erie Ry. Co. v. Commonwealth* (66 Penn. St. 84), V, 354.
- Gordon v. Longest* (16 Pet. 104), doubted; *Akerley v. Vilas* (24 Wis. 165), I, 171.
- Gould v. Chapin* (20 N. Y. 266), distinguished; *Fenner v. Buf. & State Line R. Co.* (44 N. Y. 505), IV, 710.
- Gould v. Segee* (5 Duer, 266), disapproved; *Benson v. Huntington* (21 Mich. 415), IV, 502.
- Governor v. Meredith* (4 T. R. 794), denied; *Thurston v. St. Joseph* (51 Mo. 510), XI, 464.
- Grafton Bank v. Flanders* (4 N. H. 289), denied; *Bartlet v. Tucker* (104 Mass. 342), VI, 244.
- Grandin v. Le Roy* (2 Paige, 509), see *Bowman v. Van Kuren* (29 Wis. 209), IX, 557.
- Great Western Railway Co. v. Hawkins* (18 Mich. 427), explained and limited; *Lake Shore, etc., Railroad Co. v. Perkins* (25 Mich. 329), XII, 281.

- Greensburg v. Young* (58 Penn. St. 280), limited; *Washington avenue* (60 Penn. St. 852), VIII, 259.
- Gregg v. Wyman* (4 Cush. 322), overruled; *Hall v. Corcoran* (107 Mass. 252), IX, 81.
- denied; *Sutton v. Wauwatosa* (29 Wis. 21), IX, 585.
- Griffin v. Home* (18 Johns. 397), limited; *Mississippi and Tennessee Railroad Co. v. Devaney* (42 Miss. 555), II, 616.
- Grinnell v. Phillips* (1 Mass. 580), overruled; *Woodward v. Leavitt* (107 Mass. 461), IX, 52.
- Hallock v. Jaudin* (84 Cal. 172), overruled in part; *Duffy v. Hobson* (40 Cal. 240), VI, 617.
- Hammett v. Philadelphia* (65 Penn. St. 146, 8 Am. Rep. 615), distinguished; *Broadway Baptist Church v. McAttee* (8 Bush. 508), VIII, 482.
- Hanson v. Vernon* (37 Iowa 28, 1 Am. Rep. 215), overruled; *Stewart v. Supervisors* (80 Iowa, 9), I, 238.
- Hanger v. Abbott* (6 Wall. 532), limited; *Kershaw v. Kelsey* (100 Mass. 561), I, 148.
- Harman v. Abbey* (7 Ohio St. 218), explained and limited; *Kleine v. Katzenberger* (30 Ohio St.), V, 331.
- Harper v. New York City Ins. Co.* (22 N. Y. 441), disapproved; *United Fire, etc., Ins. Co. v. Foot* (22 Ohio St. 840), X, 744.
- Harris v. Frink* (2 Lans. 35), reversed; *Harris v. Frink* (49 N. Y. 24), X, 318.
- Harrison v. Harrison* (1 Car. & P. 412), disapproved; *Sturgis v. Keith* (57 Ill. 451), XI, 83.
- Hay v. Cohoes Co.* (2 N. Y. 159), distinguished; *Losee v. Buchanan* (51 N. Y. 479), X, 623.
- Illinois Central R. R. Co. v. Nunn* (51 Ill. 78), denied; *Kellogg v. Chicago, etc., R. R. Co.* (26 Wis. 223), VII, 71.
- Indianapolis & Cincinnati R. R. Co. v. McClure* (26 Ind. 870), corrected; *Bellefontain R. R. Co. v. Hunter* (33 Ind. 835), V, 218.
- Insurance Company v. Tweed* (7 Wall. 45), limited; *Pennsylvania Railroad v. Kerr* (63 Penn. St. 353), I, 437.
- Isnard v. Torres* (10 La. An. 103), denied; *Holmes v. Trumper* (22 Mich. 427), VII, 668.
- Israel v. Reynolds* (11 Ill. 218), denied; *Stout v. Folger* (34 Ill. 71), XI, 140.
- Jackson v. Crafts* (18 Johns. 110), denied; (34 N. J. 496), III, 361; *Kortright v. Cady* (31 N. Y. 343), denied; (34 N. J. 496), III, 361.
- Judson v. Durland* (2 Johns. Cas. 314), denied; *Sullivan v. Sullivan* (106 Mass. 475), VIII, 357.
- Jackson v. Sebring* (16 Johns. 515), denied; *Trafton v. Hawes* (102 Mass. 537), III, 497.
- Jackson v. Woods* (1 Johns. Cas. 163), denied; *Sullivan v. Sullivan* (106 Mass. 475), VIII, 357.
- Jecker v. Montgomery* (18 How. [U. S.] 110), limited; *Kershaw v. Kelsey* (100 Mass. 561), I, 148.
- Jennings v. Chenango County Mut. Ins. Co.* (2 Denio, 75), denied; *North Am. Fire Ins. Co. v. Throop* (22 Mich. 146), VII, 644.

- Hibbard v. N. Y. & E. R. R. Co. (15 N. Y. 467), limited; Higgins v. Watervliet Co. (46 N. Y. 23), VI, 298.
- Hickok v. Plattsburgh (16 N. Y. 161), denied; Detroit v. Blakeby (21 Mich. 84), IV, 455.
- Hicks v. Newport, etc., Ry. Co. (4 B. & S. 396), distinguished; Harding v. Townshend (43 Vt. 536), V, 307.
- Hiland v. Lowell (8 Allen, 407), explained and limited; Baker v. Portland (68 Me. 199), IV, 276.
- Hill v. Ely (5 Serg. & Rawle, 363), explained and distinguished; Dale v. Gear (88 Conn. 15), IX, 358.
- Hillary v. Gray (6 C. & P. 284), denied; Sterling v. Warden (51 N. H. 217), XII, 98.
- Hillary v. Waller (12 Ves. 289), limited; State v. Franklin Falls Co. (49 N. H. 240), VI, 521.
- Hillier v. Alleghany Ins. Co. (3 Penn. 470), denied; White v. Republic Ins. Co. (57 Me. 91), II, 24.
- Hoffman v. St. Louis (15 Mo. 651), overruled; Thurston v. St. Joseph (51 Mo. 510), XI, 464.
- Howard Ins. Co. v. Scribner (5 Hill, 298), overruled; Ogden v. East (50 N. Y. 888), X, 493.
- Hugus v. Strickler (19 Iowa, 418), denied; Green v. Holway (101 Mass. 248), III, 841.
- Hulson v. Mayor (9 N. Y. 163), denied; Detroit v. Blakeby (21 Mich. 84), IV, 455.
- Johnson v. Martenus (4 Halst. 144), criticised; Chaddock v. Vanness (35 N. J. 517), X, 259.
- Jones v. Andover (10 Allen, 18), questioned; Sutton v. Wauwatosa (29 Wis. 21), IX, 585.
- Jones v. Shears (4 Ad. & El. 833), questioned; Schuyler v. Smith (51 N. Y. 317), X, 609.
- Keith v. Easton (2 Allen, 552), disapproved; Ayer v. Norwich (39 Conn. 376), XII, 898.
- Kennedy v. People (39 N. Y. 245), denied; Hogan v. State (30 Wis. 428), XI, 578.
- Kerr v. Seaver (11 Allen, 151), distinguished; Blair v. Forehand (100 Mass. 186), I, 100.
- Kimball, *in re* (2 Benedict, 554), denied; Cronan v. Cotting (104 Mass. 245), VI, 234.
- Kingsbury v. Dedham (13 Allen, 186), disapproved; Ayer v. Norwich (39 Conn. 376), XII, 898.
- Kinnier v. Kinnier (45 N. Y. 535; 6 Am. Rep. 132), questioned; People v. Dawell (25 Mich. 247), XII, 271.
- Kountz v. Kennedy (68 Penn. St. 187; 8 Am. Rep. 541), explained and limited; Fulmer v. Selts (68 Penn. St. 237), VIII, 174.
- Lathrop v. Morris (5 Sandf. 9), questioned; Bowman v. Van Kuren (29 Wis. 209), IX, 557.
- Landon v. Litchfield (11 Conn. 251), denied; Lord v. Litchfield (36 Conn. 116), IV, 48.

- Lawrence v. Fox* (30 N. Y. 268), limited; *Ætna National Bank v. Fourth National Bank* (46 N. Y. 82), VI, 322.
- Lightfoot v. Tenant* (1 Bos. & Pul. 551), explained; *Hill v. Spear* (50 N. H. 258), IX, 219.
- Lucas v. New Bedford, etc., R. R. Co.* (6 Gray, 65), distinguished; *Dunn v. Grand Trunk Ry. Co.* (58 Me. 187), IV, 278.
- Mason v. Baker* (1 Marsh. 206), denied; *Springer v. Drosch* (82 Ind. 486), II, 359.
- Masters v. Warren* (27 Conn. 298), denied; *Johnson v. Wells* (6 Nev. 224), III, 247.
- May v. Foster* (1 Allen, 408), denied; *Sutton v. Wauwatosa* (29 Wis. 21), IX, 585.
- Maynard v. Johnson* (3 Nev. 16), denied; *Green v. Holway* (101 Mass. 243), III, 341.
- McAndrews v. Telegraph Co.* (17 C. B. 8), limited; *Sweetland v. Illinois, etc., Telegraph Co.* (27 Iowa, 433), I, 292.
- McArthur v. Seaforth* (2 Taunt. 257), disapproved; *Sturges v. Keeler* (57 Ill. 451), XI, 88.
- McCandless v. McWha* (22 Penn. St. 261), considered and limited; *Smothers v. Hanks* (34 Iowa, 286), XI, 143.
- McCord v. Ochiltree* (8 Blackf. 15), overruled; *Grimes' Executors v. Harmon*, (85 Ind. 198), IX, 734.
- McCormick's Appeal* (7 P. F. Smith, 54), explained and limited; *Lefevre's Appeal* (69 Penn. St. 122), VIII, 238.
- McElroy v. Goble* (6 Ohio St. 187), explained and limited; *Tootle v. Clifton* (22 Ohio St. 247), X, 733.
- McGinnis v. Watson* (5 Wright, 9), criticised; *Schnorr's Appeal* (67 Penn. St. 188), V, 418.
- McMath v. Johnson* (41 Miss. 439), limited; *Robinson v. Harbour* (42 Mass. 797), *Merritt v. Todd* (23 N. Y. 28), limited; *Herrick v. Woolverton* (41 N. Y. 581), I, 466, 472.
- Michigan Central Railroad Co. v. Hale* (6 Mich. 243), explained; *Lake Shore & Michigan Southern Railroad Co. v. Perkins* (25 Mich. 329), XII, 281.
- Michigan Southern and Northern Indiana Railroad Co. v. McDonough* (21 Mich. 165; 4 Am. Rep. 466), denied; *Kansas, Pacific Railway Co. v. Nichols* (9 Kans. 235) XII, 495.
- Miller v. Morrow* (8 Coldw. 587), denied; *Green v. Holway* (101 Mass. 243), III, 341.
- Mitchell v. Doggett* (1 Fla. 371), denied; *Woodruff v. Scruggs* (27 Ark. 26), XI, 780.
- Moore v. Sanborne* (2 Mich. 519), denied; *Hubbard v. Bell* (54 Ill. 110), V, 101
- Morehead v. Little Miami Railway Co.* (17 Ohio, 340), distinguished; *Mississippi & Tennessee Railroad Co. v. Devaney* (42 Miss. 555), II, 615.
- Morris v. Cleasby* (4 Maule & Selw. 566), denied; *Lewis v. Brehme* (33 Md. 412), III, 198.
- Moseley v. Mosely* (15 N. Y. 334), denied; *Springer v. Drosch* (82 Ind. 486), II, 357.

- Nellis v. Clark (4 Hill, 424), denied; Springer v. Drosch (32 Ind. 486), II, 357.
 Newton v. Eddy (23 Vt. 319), disapproved; 51 N. H. 496, XI, 146.
 Norris v. Norris (9 Dana, 817), denied; Springer v. Drosch (32 Ind. 486), II, 359.
 Norton v. Jackson (5 Cal. 262), limited; McGary v. Hastings (39 Cal. 360), II, 458.
 Norwich Gas-light Co. v. Norwich City Gas-light Co. (25 Conn. 20), denied;
 State v. Milwaukee Gas-light Co. (29 Wis. 454), IX, 602.
 O'Conner v. Warner (4 W. & S. 238), explained; Haley v. Philadelphia (68
 Penn. St. 45), VIII, 155.
 Odom v. Harrison (1 Jones [N. C.], 402), denied; Carey v. Guilloe (105 Mass.
 18), VII, 495.
 Osborn v. Bank of United States (9 Wheat. 738), limited; Cook v. State Nat.
 Bank (52 N. Y. 107), XI, 678.
 Ottawa v. Foster (20 Ill. 296), limited; Waltham v. Kemper (55 Ill. 346), VIII,
 652.
 Overton v. Tyler (3 Barr. 346), distinguished; Zimmerman v. Anderson (67
 Penn. St. 421), V, 449.
 Parker v. The Cutler Mill Dam Co. (20 Me. 353), explained; Lee v. Pembroke
 Iron Co. (57 Me. 481), II, 63.
 Pennsylvania R. R. Co. v. Kerr (62 Penn. St. 353; S. C., 1 Am. Rep. 431)
 doubted; Kellogg v. Chicago, etc., R. R. Co. (26 Wis. 223), VII, 78.
 Perkins v. The P. S. & P. R. R. Co. (47 Me. 578), limited; Nashua Lock Co. v.
 The Worcester & Nashua R. R. Co. (48 N. H. 339), II, 256.
 People v. George Washington (86 Cal. 658), limited; (40 Cal. 198), VI, 612.
 People v. Gilmore (4 Cal. 376), disapproved; State v. McCord (8 Kans. 232),
 XII, 472.
 People v. Outten (28 Cal. 44), denied; People v. Bull (46 N. Y. 57), VI, 308.
 People v. Raymond (84 Cal. 495), distinguished; State v. Steamship Constitu-
 tion (42 Cal. 578), X, 308.
 People v. Salem (20 Mich. 485; 4 Am. Rep. 400), denied; Commissioners of
 Leavenworth v. Miller (7 Kans. 479), XII, 460.
 People v. Smyth (28 Cal. 21), disapproved; Auditors of Wayne Co. v. Bennet
 (20 Mich. 176), IV, 336.
 People v. Supervisors of Green (12 Barb. 217), denied; State v. Gibbs (18 Fla.
 55), VII, 235.
 People v. Sweetman (3 Park. Cr. 358), denied; State v. Whittemore (50 N. H.
 245), IX, 197.
 Perry v. Thompson (98 Mass. 249), distinguished; Grace v. Adams (100 Mass.
 505), I, 134.
 Philadelphia & Reading R. R. Co. v. Hummel (7 P. F. Smith, 129), distin-
 guished; Kay v. Pennsylvania R. R. Co. (16 Penn. St. 269), III, 632.
 Phillips v. Commonwealth (2 Duvall, 328), overruled; Buchanan v. Common-
 wealth (8 Bush. 481), VIII, 480.
 Pidgin v. Cram (8 N. H. 352), limited; Kelley v. Davis (49 N. H. 176), VI, 504.
 Pike v. Galvin (29 Me. 185), disapproved; Doe v. Dowdall (8 Houst. 369), XI, 768.
 Pike v. Street (8 Moody & Mal. 227), denied; Dale v. Gear (38 Conn. 15), IX, 359.
 Pittsburg & Connelville R. R. Co. v. McClurg (Penn.), denied; Chicago &
 Alton R. R. Co. v. Pondrom (51 Ill. 333), II, 309.

- Plessinger v. Depuy (25 Ind. 419), denied; Green v. Holway (101 Mass. 248), III, 341.
- Platt v. Lott (17 N. Y. 478), denied; Mims v. Armstrong (81 Md. 87), I, 27.
- Poole v. Richardson (3 Mass. 330). See State v. Pike (49 N. H. 399), VI, 546.
- Powell v. Mills (37 Miss. 691), denied; Wycoff v. Queens County Ferry Co. (52 N. Y. 34), XI, 652.
- Pray v. Northern Liberties (7 Casey, 69), explained and limited; Washington Avenue (69 Penn. St. 352), VIII, 257.
- Price v. Taylor (4 Casey, 96), limited; Taylor v. Taylor (63 Penn. St. 481), III, 570.
- Railroad v. Shanefelt (47 Ill. 497), denied; Kellogg v. Chicago & Northwestern Ry. Co. (26 Wis. 223), VII, 71.
- Richmond v. State (5 Ind. 334), overruled; Grimes' Executors v. Harmon (85 Ind. 198), IX, 734.
- Robbins v. Richardson (2 Bosw. 253), questioned; Bowman v. Van Kuren (29 Wis. 209), IX, 557.
- Robinson v. Hutchinson (26 Vt. 38), limited; Williams v. Robinson (49 Vt. 658), I, 365.
- Ryan v. New York Central R. R. Co. (35 N. Y. 210), doubted; Kellogg v. Chicago, etc., R. R. Co. (26 Wis. 223), VII, 78.
- Sadler v. Laugham (34 Ala. 311), disapproved; People v. Salem (20 Mich. 452), IV, 412.
- Sanford v. Handy (23 Wend. 260), denied; Holbrook v. Connor (60 Me. 578), XI, 216.
- Schneider v. Evans (25 Wis. 241; 3 Am. Rep. 56), limited; Conkey v. Milwaukee Ry. Co. (31 Wis. 619), XI, 636.
- Seger v. Barkhamsted (23 Conn. 298), criticised and denied; Johnson v. Wells (6 Nev. 224), III, 247.
- Seixas v. Wood (2 Cal. 48), explained; Hawkins v. Pemberton (51 N. Y. 202), X, 595.
- Seymour, *In re* (1 Ben. 348), denied; Cronan v. Colling (104 Mass. 245), VI, 234.
- Sharpless v. Mayor of Philadelphia (21 Penn. St. 147), denied; Hanson v. Vernon (27 Iowa, 28), I, 215.
- disapproved; People v. Salem (20 Mich. 452), IV, 420.
- See Hammett v. Philadelphia (65 Penn. St. 146), III, 621.
- Shepherd v. Johnson (2 East. 211), disapproved; Sturges v. Keith (57 Ill. 451), XI, 33.
- Shipley v. Carroll (45 Ill. 285), disapproved; Burson v. Huntington (21 Mich. 415), IV, 502.
- Smetters v. Rainey (14 Ohio St. 287), criticised; Bradford v. Andrews (20 Ohio St. 208), V, 647.
- Smith v. Commonwealth (1 Duvall, 224), overruled; Shannahan v. Commonwealth (8 Bush. 463), VIII, 471.
- Springfield Bank v. Merrick (14 Mass. 323), denied; Woodruff v. Scruggs (27 Ark. 26), XI, 790.
- St. Louis v. Gurno (12 Mo. 414), overruled; Thurston v. St. Joseph (51 Mo. 510), XI, 464.

- State v. Ohio & Miss. R. R. Co.* (7 Ind. 479), distinguished; *Slatten v. Des Moines R. R. Co.* (29 Iowa, 148), IV, 208.
- Steamboat Josephine* (39 N. Y. 19), commented upon and distinguished; *Shepherd v. Steele* (43 N. Y. 52), III, 661.
- explained and limited; *Brookman v. Hummill* (43 N. Y. 555), III, 732.
- Stockham v. Munson* (28 Ill. 53), limited; *Frank v. Morris* (57 Ill. 138), XI, 6.
- Stout v. Foster* (1 How. [U. S.] 89), distinguished; *Austin v. Steamboat Co.* (43 N. Y. 75), III, 667.
- Stuber's Road* (4 Cas. 199); see *Palairot's Appeal* (67 Penn. St. 479), V, 450.
- Sweeney v. Sampson* (5 Ind. 465), overruled; *Grimes' Executors v. Harmon* (35 Ind. 198), IX, 734.
- Swett v. Colgate* (20 Johns. 196), explained; *Hawkins v. Pemberton* (51 N. Y. 202), X, 595.
- Taylor v. Pratt* (3 Wis. 674), overruled; *Houghton v. Ely* (26 Wis. 181), VII, 53.
- Taylor v. St. Louis* (16 Mo. 20), overruled; *Thurston v. St. Joseph* (51 Mo. 510), XI, 464.
- Tenney v. Evans* (13 N. H. 462), denied; *Woodward v. Leavitt* (107 Mass. 470), IX, 59.
- Theobald v. Railway Passengers' Assurance Co.* (26 Eng. L. & Eq. 432), explained; *Schneider v. Provident Life Ins. Co.* (24 Wis. 28), I, 159.
- Thomas v. Commissioners* (5 Ind. 4), denied; *State v. County Court* (50 Mo. 317), XI, 417.
- Thomas v. Winchester* (6 N. Y. 397), explained and distinguished; *Cook v. Litchfield* (43 N. Y. 351), I, 545.
- Thompson v. Perkins* (3 Mas. C. C. 232), denied; *Lewis v. Brehme* (33 Md. 412), III, 198.
- Todd v. Rowley* (8 Allen), see *unMason v. Mallory* (26 Conn. 165), IV, 54.
- Turnpike Co. v. Hosmer* (12 Conn. 364), distinguished and limited; *Mississippi & Tenn. R. R. Co. v. Devaney* (43 Miss. 555), II, 616.
- Underwood v. Parks* (3 Str. 1200), discussed; *Hanson v. Dale* (19 Mich. 17), II, 70.
- Van Epps v. Harrison* (5 Hill, 68), denied; *Holbrook v. Connors* (60 Me. 578), XI, 216.
- Vartee v. Underwood* (18 Barb. 561), denied; *Newhall v. Lynn Savings Bank* (101 Mass. 432), III, 389.
- Veazie v. Penobscot R. R. Co.* (49 Me. 119), limited and distinguished; *Eaton v. European R. R. Co.* (59 Me. 520), VIII, 436.
- Wade v. Whittington* (1 Allen, 561), criticised; *Gerrard v. Hadden* (67 Penn. St. 82), V, 414.
- Wann v. Telegraph Co.* (37 Mo. 472), limited; *Sweetland v. Illinois Telegraph Co.* (37 Iowa, 433), I, 294.
- Warren v. Lusk* (16 Mo. 102), limited; *Marx v. Fore* (51 Mo. 69), XI, 434.
- Webber v. Williams College* (23 Pick. 302), questioned; *Shapley v. Abbott* (43 N. Y. 443), I, 556.
- Wethley v. Andrews* (3 Hill, 582), explained; *Herrick v. Woolverton* (41 N. Y. 581), I, 461.

- Whelden v. Chappel (8 R. I. 230), denied; Hall v. Corcoran (107 Mass. 252), IX, 81.
- Whipple v. Walpole (10 N. H. 130), overruled; Woodman v. Nottingham (49 N. H. 887), VI, 531.
- Wibert v. N. Y. & E. R. R. Co. (19 Barb. 36), limited; Ward v. N. Y. C. R. R. Co. (47 N. Y. 83), VII, 405.
- Williamson v. Allison (2 East. 446), denied; Ross v. Mather (51 N. Y. 112), X, 562.
- Wilson v. Hamilton (4 Ohio St. 723), denied; Wyckoff v. Queens Co. Ferry Co. (52 N. Y. 84), XI, 652.
- Wilson v. Wilson (1 H. of L. Cas. 538 and 5 id. 40), denied; J. G. v. H. G. (38 Md. 401), III, 189.
- Winslow v. Kimball (25 Me. 493), denied; Sullivan v. Sullivan (106 Mass. 475), VIII, 357.
- Wood v. Milwaukee, etc., Ry. Co. (27 Wis. 541; 9 Am. Rep. 465), overruled in part; Conkey v. Milwaukee, etc., Ry. Co. (31 Wis. 619), XI, 632.
- Wood v. Stone (2 Cold. 370), overruled; Smith v. Brazelton (1 Heisk. 44), II, 639.
- Worrell v. Gheen (3 Wright, 388), explained; Neff v. Horner (68 Penn. St. 327), III, 556; Gerrard v. Hadden (67 Penn. St. 83), V, 414.
- Wright v. Overall (3 Cold. 336), overruled; Smith v. Brazelton (1 Heisk. 44), II, 639.
- Yale v. Dederer (18 N. Y. 265; 23 id. 450), denied; Deering v. Boyle (8 Kans. 525), XII, 482.
- Yost v. Stout (4 Cold. 208), limited; Smith v. Brazelton (1 Heisk. 44), II, 638.
- Young v. Grote (4 Bing. 253), explained and distinguished; Holmes v. Trumper (22 Mich. 427), VII, 667.
- Zehner v. Kepler (16 Ind. 290), overruled; Frenzel v. Miller (37 Ind. 1), X 64

DIGEST
OF THE
AMERICAN REPORTS.

ABANDONMENT.

- I. OF ACTION — *See* MALICIOUS PROSECUTION.
- II. OF PROPERTY — *See* DRIFTWOOD.
- III. OF SHIP OR CARGO — *See* INSURANCE; SHIP AND SHIPPING.

ABATEMENT.

- I. OF ACTION — *See* BANKRUPTCY.
- II. OF NUISANCE — *See* NUISANCE.

ACCEPTANCE.

By parol. Defendants, having a note for collection, received an order from the owner requesting them to pay a portion of the proceeds when collected to plaintiffs. The order having been accepted by parol, defendants subsequently transferred the note to C., to whom it was paid. *Held*, that the parol acceptance was binding, and that defendants were liable to plaintiffs for the amount of the order. 1870. *Phelps v. Northrup* (56 Ill. 156), VIII, 681.

See BILLS AND NOTES.

ACCESSION.

Title by transformation of property. One of two tenants in common of certain timber land conveyed his undivided half of the land by warranty deed to certain parties to whom he was indebted, such parties agreeing orally to reconvey upon the discharge of the indebtedness. Subsequent to the sale of his interest in the land, and under authority previously given by his co-tenant, the vendor sold a quantity of the timber growing upon the land, to a third party, who cut and manufactured the same into hoops. An action for replevin was brought by the owners of the land to recover the hoops. It was shown upon the trial that the value of the timber was \$25, and that the value of the hoops was \$700. *Held*, that evidence, showing that the defendant purchased the

4 ACCIDENT — ACCORD AND SATISFACTION.

timber and manufactured it in good faith, was admissible; and that upon such showing he was entitled to have the jury instructed that the title to the timber was changed by a substantial change of identity, and that the remedy of the plaintiff was by an action of trespass. 1871. *Wetherbee v. Green* (22 Mich. 311), VII, 658.

See ACCRETION; SALE.

ACCIDENT.

I. LIABILITY IN CONSEQUENCE OF.

II. TO SERVANT — See MASTER AND SERVANT.

III. TO OTHER PERSONS — See NEGLIGENCE; NUISANCE.

I. LIABILITY IN CONSEQUENCE OF.

1. Where injury arises from a fortuitous occurrence, beyond the control of man, it is termed "the act of God," and the party through whom it occurs is not responsible. Thus the owner of property which, without his consent, is carried by flood or storm down a stream, and deposited upon the lands of another, is not liable for any damage occasioned, unless he reclaim the property. *Shelden v. Sherman* (42 N. Y. 484), I, 569; *Livezey v. Philadelphia* (64 Penn. St. 106), III, 578.

2. **Explosion of steam boiler.** The owner of a steam boiler operated upon his own premises, in a lawful manner, is not liable, without proof of negligence, to an adjoining owner, for damage done to his property by reason of an accidental explosion of such boiler. 1869. *Losce v. Buchanan* (51 N. Y. 476), X; but see *Wilson v. City of New Bedford* (108 Mass. 261), XI, 352, and *Cahill v. Eastman* (18 Minn. 324), X, 184.

3. **Glancing bullet.** *Trespass vi et armis* will lie for an accidental injury caused by the glancing of a pistol ball, shot at a mark. 1869. *Welch v. Durand* (86 Conn. 182), IV, 55.

ACCIDENT INSURANCE — See INSURANCE.

ACCOMMODATION INDORSER — See BILLS AND NOTES.

ACCOMMODATION NOTE — See BILLS AND NOTES.

ACCORD AND SATISFACTION.

1. The acceptance of a note for \$40 in satisfaction of a note for \$60, and the simultaneous surrender of the larger note is a full discharge thereof. 1871. *Draper v. Hitt* (43 Vt. 439), V, 292.

2. **Of a reward.** The plaintiff recovered property stolen from the defendant and returned it to him. Defendant handed him some money, saying "here is something for what you have done." Plaintiff did not at the time look at the money, but afterward found it to be \$3. Defendant had on that morning offered a reward of \$50 for a recovery of the property, of which fact plaintiff was at the time ignorant, but for which reward he brought this action. Held, that he could not recover. 1870. *Marvin v. Treat* (37 Conn. 96), IX, 307.

3. **Defense of, in action on a judgment.** Accord and satisfaction is a good defense to an action or other proceeding on a judgment. 1872. *Savage v. Everman* (70 Penn. St. 315), X, 676.

4. — Debtors residing in Pennsylvania, and owning lands in New Jersey, agreed with a creditor to permit and cause to be effected a sheriff's sale of such lands, and that the creditor should purchase the same at the sale, and receive it in full satisfaction and discharge of the debt. To carry out this agreement, the debtors went to New Jersey, and there accepted service of process, and judgment being obtained against them by default, and the property sold on execution, the creditor became the purchaser at a sum less than the debt. *Held*, (1) that this was a good defense, to an action brought upon the judgment, to recover the balance due; (2) that the defense was admissible, under a plea of payment, with leave to give the special matter in evidence. *Id.*

See PAYMENT.

ACCOUNT.

I. STATED.

II. ACTION OF.

1. *Between partners* — *See* PARTNERSHIP.
2. *Between tenants in common* — *See* TENANTS IN COMMON.

I. ACCOUNT STATED.

It is no bar to action on an account stated, that the defendant's indebtedness was for liquors sold by plaintiff on Sunday, contrary to law, if the account was not stated on Sunday; but if the sale was illegal for want of a license the action on an account stated could not be maintained. 1872. *Melchior v. McCarty* (81 Wis. 252), XI, 605.

ACCRETION.

1. **Follows original.** An act of congress, laying out the city of Burlington, provided that a strip of land along the river should be reserved for public use. *Held*, that the natural accretions from the river partook of the same character as the original strip. *Cook v. Burlington* (30 Iowa, 94), VI, 649.

2. **From lake.** The owner of lands bounded on a lake, whether navigable or not, is entitled to the land left dry by the gradual or imperceptible receding of the waters. 1867. *Warren v. Chambers* (25 Ark. 120), IV, 28.

3. **Where a new shore is formed on a river not navigable, by the alluvial deposits taken from the opposite side by the wearing away of the stream, the land on the new shore is to be divided between the owners entitled to it, according to the following rule:** "Give to each owner a share of the new shore line in proportion to what he held in the old shore line and complete the division of the land by running a line from the bound between the parties on the old shore to the point thus ascertained on the new." 1871. *Batchelder v. Keniston* (51 N. H. 496), XII, 143.

ACKNOWLEDGMENT — *See* CONVEYANCE.

ACTION.

ACTION.

- I. BY AND AGAINST WHOM MAINTAINABLE.
- II. WHERE BROUGHT.
- III. WHEN BROUGHT.
- IV. FOR WHAT MAINTAINABLE.
- V. FORM.
- VI. ON JUDGMENTS.
- VII. ABATEMENT.
- VIII. LIMITATION OF ACTIONS — *See* LIMITATION OF ACTIONS.

I. BY AND AGAINST WHOM MAINTAINABLE.

1. **By administrator for tort.** An action lies by the administrator of a person whose death has been occasioned by the negligence of the defendant apothecary, in putting up a poison instead of a harmless medicine. *Norton v. Sewall* (106 Mass. 143), VIII, 298.

2. **By auctioneer.** Defendant, at an auction sale, signed an agreement to comply with the terms of sale, one of which was, that the purchaser should pay the auctioneer \$200 to bind the bargain. The property was knocked down to defendant, but he afterward refused to complete the sale. *Held*, that an action for the money was properly brought by the auctioneer. 1869. *Thompson v. Kelly* (101 Mass. 291), III, 353.

3. **By bailee.** The possession of goods acquired by plaintiff under a bill of lading is sufficient to maintain an action against one who does not show a better title. 1868. *Adams v. O'Connor* (100 Mass. 515), I, 137.

4. **By consignor against carrier.** Plaintiff sold goods which were ordered by the vendee, to be sent, "via canal," sent them as ordered and mailed bill of sale. *Held*, that title passed to the vendee on delivery to the carrier, and that plaintiff could not maintain an action for loss *in transitu*. 1871. *Krudler v. Ellison* (47 N. Y. 36), VII, 402.

5. — An action will not lie against a common carrier for failing to deliver goods shipped by the plaintiff, unless the plaintiff be the owner or have some special interest in them. 1872. *Thompson v. Fargo* (49 N. Y. 188), X, 342.

6. — An action is well brought by the consignor of goods "sold to arrive" against a carrier in whose possession they were destroyed. 1870. *Hooper v. Chicago & Northwestern Ry. Co.* (27 Wis. 81), IX, 439.

7. — **on through contract.** No action lies by a shipper against one carrier for goods lost by a connecting carrier, on a contract between the carriers which provides that the gross receipt on through freight shall be divided, but that each carrier shall only be responsible for goods lost in his possession. 1868. *Burroughs v. Norwich, etc., R. R. Co.* (100 Mass. 26), I, 78.

8. **By guardian ad litem.** An action is well brought by the guardian *ad litem* of children under age, to recover insurance money payable to the children for their use or their guardian, if under age. 1871. *Price v. Phenix Mut. Life Ins. Co.* (17 Minn. 497), X, 166.

9. By heirs. The heirs of real estate cannot sue upon a covenant against incumbrances broken during the life of the person under whom they claim the estate. The administrator is the proper party plaintiff. 1870. *Prink v. Bellis* (88 Ind. 135), V, 198.

10. By married woman. A married woman may maintain an action in her own name for personal injuries, where the statute secures to her her separate property. 1869. *Chicago, Burlington, etc., R. R. Co. v. Dunn* (52 Ill. 260), IV, 606.

11. By mortgagee. A mortgagee without possession or right of possession cannot maintain trespass *quare clausum fregit*; but he can maintain an action to recover the value of fixtures removed from the mortgaged premises. 1869. *Gooding v. Shea* (103 Mass. 360), IV, 563.

12. By owner of vessel. An action for conversion may be maintained by the owner of a vessel against a person claiming under a barratrous sale by the master, notwithstanding the fact that the owner had abandoned the vessel to the underwriters and received payment as for a total loss. 1869. *Clark v. Wilson* (103 Mass. 219), IV, 532.

13. Against city for neglect of fire department. An action will not lie against a city by one whose property has been burned, for a defective fire department, nor for the neglect of fire companies and officers. 1869. *Wheeler v. City of Cincinnati* (19 Ohio St. 19), II, 368; *Fisher v. City of Boston* (104 Mass. 87), VI, 196; *Jewett v. City of New Haven* (88 Conn. 868), IX, 382; *Torbush v. City of Norwich* (88 Conn. 225), IX, 395; *Grant v. Erie* (69 Penn. St. 420), VIII, 272.

14. Against corporation. An action will lie against a corporation for wrongfully refusing to issue certificates of stock. *Baltimore City Passenger Ry. Co. v. Sewell* (85 Md. 238), VI, 402.

15. Against husband by wife's attorney. An action will not lie against a husband to recover for services as attorney for the wife, in a suit against her for divorce, on the ground of adultery. 1870. *Ray v. Adden* (50 N. H. 82), IX, 175.

16. — An action lies against a husband to recover for services as attorney for the wife, in proceedings prosecuted unsuccessfully by the husband against her to find sureties to keep the peace. 1871. *Warner v. Heiden* (28 Wis. 517), IX, 515.

17. Against manufacturer of defective machine. The manufacturer of a steam boiler is answerable only to his employer for any want of care or skill in the construction thereof. After the boiler has been completed and accepted by the employer, who has the exclusive ownership, management and conduct of it, the manufacturer is not liable for injuries done to a third person by an explosion occurring in consequence of the defective construction of the boiler. 1873. *Loose v. Clute* (51 N. Y. 494), X, 638.

18. Against vendor of defective machine. An action will not lie against the vendor of a machine, not dangerous in its nature, by one injured through a defect therein. *Loop v. Litchfield* (42 N. Y. 351), I, 548.

19. Against county or town. A private action will not lie against a county

or town for injuries occasioned by reason of the neglect of its officers to keep a bridge in repair. *White v. County of Bond* (58 Ill. 297), XI, 65, note, 66; *Town of Waltham v. Kemper* (55 Ill. 346), VIII, 652.

20. — An action lies against a town to recover a reward offered under the provisions of a general statute. 1868. *Janerin v. Town of Elletts* (48 N. H. 88), II, 185.

21. **Against owner of leased premises.** An action will not lie against the owner of premises for injuries occasioned by their being out of repair where the premises were, at the time, in the possession of a tenant and were in good repair when they came to his possession. 1870. *Fisher v. Thirkell* (21 Mich. 1), IV, 422.

22. — Where, however, the roof was not under the control of the tenants, the landlord was held liable for injuries occasioned by snow and ice falling therefrom, although the tenants had covenanted to keep the premises in repair. 1869. *Shipley v. Fifty Associates* (101 Mass. 251), III, 346. See LANDLORD AND TENANT.

23. **Between several owners of a building.** The owner of the upper story of a building has no action against the owner of the lower story to recover contribution for repairs of the roof, made by the former. 1871. *Ottumwa Lodge v. Lewis* (34 Iowa, 67), XI, 185.

24. — The owner of one part of a building has no action to recover damages at law for the willful neglect of the owner of the other part in permitting his part to become ruinous and fall into decay, whereby the plaintiff's part is injured. 1872. *Pierce v. Dyer* (109 Mass. 374), XII, 716.

25. **Against owner for negligence of contractor.** Where the owner of land undertakes to do a work thereon, which is not in itself a nuisance, by means of a contractor exercising an independent employment and employing his own servants, an action will not lie against the owner for injuries resulting from the negligence of such contractor or his servants in the execution of it, unless the owner is in fault in employing an unskillful or improper person as contractor. 1870. *Ouff v. Newark & New York R. R. Co.* (35 N. J. 17), X, 205.

26. **Against voluntary agent.** Declaration that defendant, the teacher of a high school, was requested by the school committee, whose own duty it was to examine candidates for admission to such school and report upon their qualifications, that he undertook the duty, that plaintiff was examined and found qualified, but that defendant falsely and maliciously reported against him and he was excluded from the benefits of the school. On demurrer *held*, (1) that the declaration was good; (2) that the confidence reposed in the defendant by the committee to examine candidates, and his acceptance of the trust, created sufficient legal consideration to make it a duty to faithfully perform the same. 1871. *Hammond v. Hussey* (51 N. H. 40), XII, 41.

27. — So when a policy on the life of B was made payable to M., who held it for the benefit of a creditor of B, though without such creditor's knowledge, *held*, B having died, that the creditor could maintain an action against M. 1871. *Hutchings v. Miner* (46 N. Y. 456), VII, 369.

28. **Against stakeholder.** An action lies against a stakeholder by the loser to recover money bet on a horse race, after notice not to pay it to the winner and demand. *Wilkinson v. Tousley* (16 Minn. 299), X, 189.

29. **Joinder of parties in action for reward.** In an action for a reward, *held*, that if two persons jointly perform the service, they must be joined as plaintiffs. *Janerin v. Exeter* (48 N. H. 88), II, 185.

II. WHERE BROUGHT.

30. **Against national bank.** An action against a national bank organized under the act of congress of 1864, chapter 106, can be brought in a State court only in the city or county where it is located. 1869. *Crocker v. Marine Nat. Bank* (101 Mass. 240), III, 886. See *contra*, *Cook v. State National Bank* (52 N. Y. 96), XI, 667.

31. **On guardian's bond.** An action cannot be maintained in the courts of Vermont, on a bond executed to a judge of probate in New Hampshire, to secure the proper discharge of the duties of a guardian; the duties imposed by the guardian's appointment, the obligation created by the bond, and the rights and remedies under it, being all prescribed by the statute of New Hampshire. 1872. *Judge of Probate, etc. v. Hubbard* (44 Vt. 597), VIII, 896.

32. **By assignee in bankruptcy.** An action by an assignee in bankruptcy to recover goods fraudulently transferred by the bankrupt, will not lie in a State court. 1872. *Brigham v. Claffin* (81 Wis. 607), XI, 623.

33. — An action will not lie in a State court at the suit of an assignee in bankruptcy, to set aside a conveyance made by a bankrupt, in fraud of the bankrupt act. 1872. *Voorhies v. Friebie* (25 Mich. 476), XII, 291. See to the contrary *Cogdell v. Ezum* (69 N. C. 464), XII, 657.

III. WHEN BROUGHT.

34. **For breach of promise to marry.** One who contracts to marry at a future day, and before that day arrives refuses to perform, is instantly liable to an action for breach of promise. 1871. *Burtis v. Thompson* (42 N. Y. 246), I, 516; *S. P. Holloway v. Griffith* (32 Iowa, 409), VII, 208.

35. **For breach of contract.** An action lies immediately for the breach of an entire contract, after the performance is commenced, but before the arrival of the time at which a part of it was to be performed. 1872. *Dugan v. Anderson* (86 Md. 567), XI, 509.

36. **On promissory note.** An action on a promissory note, payable generally, commenced at a quarter past six P. M., on the last day of grace, no demand of payment having been made, *held*, premature. 1869. *Estes v. Tower* (102 Mass. 65), III, 439.

37. **For malicious prosecution.** A husband and wife commenced an action for a malicious replevin of their household furniture, alleging that the replevin suit was commenced with intent to injure the wife, and actually resulted in her injury by the removal of the furniture. It appeared that the replevin suit was still pending. *Held*, that the action could not be maintained. 1869. *O'Brien v. Barry* (106 Mass. 800), VIII, 329.

38. **Against thief for value of stolen goods.** In an action to recover the value of property alleged to have been stolen from the plaintiff by the defendant, *held*, that the right of action was not suspended until the determination of a criminal prosecution against the offender. 1869. *Howk v. Minnick* (19 Ohio St. 462), II, 418.

IV. FOR WHAT MAINTAINABLE.

39. **For injuries from use of property.** A person who uses his property in such a manner as necessarily tends to injure the property of another, is liable to an action for an injury which results from such use, without regard to care and skill therein. 1871. *Cahill v. Eastman* (18 Minn. 324), X, 184.

40. — An action lies for injury to plaintiff's land from water percolating from a reservoir erected on lands sold to defendant by plaintiff for that purpose, although it was skillfully and carefully erected. 1871. *Wilson v. City of New Bedford* (108 Mass. 261), XI, 352; but see *post*, 41.

41. — The owner of a steam boiler, who operates and uses the same, in carrying on his business upon his own premises, in such a manner that it is not a nuisance, is not liable for damages done to the property of his neighbor by an explosion of such boiler, without proof of fault or negligence on the owner's part. The owner is liable for any defects in the manufacture of the boiler which were, or ought to have been, known to him, and for any negligence in the use of the boiler which can properly be attributable to him; but if the explosion was caused by defects which were imperceptible on examination, he is not liable therefor. The fact that the boiler was purchased of reputable manufacturers, though not of itself a conclusive justification for its use, is one of the facts tending to a justification which the jury are to consider. 1873. *Losee v. Buchanan* (51 N. Y. 476), X, 623. See *ante*, 40.

42. **Against vendor of poisoned articles.** A. sold hay upon which white lead paint had been spilt; but which he had attempted to cleanse. The purchaser's cow ate thereof and died. *Held*, that an action lay against A. 1869. *French v. Vining* (102 Mass. 182), III, 440.

43. **For obstructing water-courses.** Defendant so obstructed a stream of water on his own lands, as to cause it to flow upon plaintiff's lands. *Held*, that plaintiff could maintain an action therefor without waiting for positive injury from the water. 1871. *Tuthill v. Scott* (43 Vt. 525), V, 301.

44. — So an action lies against one who by an embankment on his own land, prevents the surface water from flowing from upper adjoining lands, even though no actual damage be shown. 1871. *Tootle v. Clifton* (23 Ohio St. 247), X, 732. See WATER AND WATER COURSES.

45. **For damages from flood-wood.** An action for damages will not lie against one whose property has been thrown, by a flood, upon the land of another, unless the owner of the property reclaim it. 1870. *Sheldon v. Sherman* (42 N. Y. 484), I, 569; See also *Livsey v. Philadelphia* (64 Penn. St. 106), III, 578.

46. **Remote cause.** Defendant's locomotive set fire to a building near the railroad track which communicated fire to plaintiff's building. *Held*, that

plaintiff had no action, the injury being too remote. 1870. *Pennsylvania R. Co. v. Kerr* (63 Penn. St. 858), I, 431. See NEGLIGENCE.

47. Slander of title. An action lies for defamation of title 1872. *Paull v. Halferty* (63 Penn. St. 46), III, 518.

48. Infected sheep. E. pastured his sheep upon W.'s land. The sheep had an infectious disease. Afterward, E.'s sheep having been removed, W.'s sheep were put upon the same land and thereby contracted the disease. W., who was ignorant of the nature of the disease, had been falsely informed by E. that there was no danger. Held, that W. had an action against E. 1870. *Eaton v. Winne* (30 Mich. 156), IV, 377.

49. For injuries while traveling on Sunday. One traveling on Sunday to the house of a friend for pleasure, cannot maintain an action against a town for injuries from a defect in the way. 1870. *Cratty v. City of Bangor* (57 Me. 423), II, 56. See SUNDAY.

50. On agreement to assume debts. Defendant for a valuable consideration agreed to assume and to save the plaintiff harmless from certain outstanding debts against him. One of plaintiff's creditors afterward commenced an action against him on a debt included in the agreement. Held, that plaintiff could maintain an action against defendant on the agreement without alleging payment or discharge by him of the debt; and (2) that plaintiff could recover the full amount of the debt. 1871. *Stout v. Folger* (34 Iowa, 71), XI, 138.

51. For work under void contract. The plaintiff agreed orally to cultivate defendant's land for two years for a share of the crop, it being understood at the time by both parties that the crop would be more valuable the second year than the first. At the end of the first year the crop was divided according to the contract, but the defendant refused to let the plaintiff cultivate the land for the second year. Held, that plaintiff could maintain an action for work done and materials furnished in cultivating the land. 1871. *Williams v. Bemis* (106 Mass. 91), XI, 318.

52. For illegal distress. An action will not lie for distraining for more rent than is due. 1872. *Hamilton v. Windolf* (36 Md. 301), XI, 491.

53. To recover taxes paid. An action in assumpsit will not lie against a town, to recover taxes paid on real estate under protest, on the ground that the assessments were not legally made. 1870. *Rogers v. Inhabitants of Greenbush* (58 Me. 390), IV, 292.

54. To recover money voluntarily paid. An action will not lie to recover money voluntarily paid. 1871. *Gibson v. Bingham* (43 Vt. 410), V, 289.

55. To recover money extorted by conspiracy. An action lies to recover money extorted by conspiracy and paid under a reasonable apprehension of injury to business. 1870. *Carew v. Rutherford* (106 Mass. 1), VIII, 287.

56. For seduction. An action lies for seduction though not followed by pregnancy or sexual disease. 1870. *Abrahams v. Kidney* (104 Mass. 222), VI, 220.

57. For inducing breach of contract. Where A has agreed to sell property to B, C may, at any time before the title has passed, induce A not to let B have the property, and to sell it to himself, provided he be guilty of no fraud

or misrepresentation, without incurring any liability to B. In such a case A alone is liable to B for the breach of contract; and B cannot maintain an action against C for damages. 1872. *Ashley v. Dixon* (48 N. Y. 430), VIII, 559.

58. **On lost note.** An action at law will not lie on a lost negotiable promissory note. *Moses v. Trice* (21 Gratt. Va. 356), VIII, 609.

59. **For reward.** An action will not lie to recover a reward offered for the finding of lost property by one who found the property without knowing of the offer. 1873. *Howland v. Lounds* (51 N. Y. 604), X, 654; and see *Marvin v. Treat* (37 Conn. 96), IX, 807.

V. FORM.

60. **Trespass vi et armis.** An action of trespass *vi et armis* will lie for an unintentional injury caused by the glancing of a pistol ball, shot at a mark, and if gross negligence and culpable carelessness is proved, additional damages, as expenses of the litigation, will be allowed. 1869. *Welch v. Durand*, (36 Conn. 182), IV, 55.

61. — B seized A by the arm, swung him around and let him go, thereby throwing him violently against C, who instantly pushed him away and against a hook which injured him. *Held*, that A could maintain action of trespass *vi et armis*, against B. 1870. *Ricker v. Freeman* (50 N. H. 420), IX, 267.

62. **Case.** An action on the *case* is the proper remedy to recover damages occasioned by withholding from the party entitled to possession real estate which the defendant had promised to vacate upon a fixed day. 1869. *Moore v. Davis* (49 N. H. 45), VI, 460.

63. — Plaintiff's cow escaped into defendant's land, through defect of a fence which the latter was bound to repair, and was there bitten by a dog. *Held*, that trespass would not lie, but *semble*, that case would. 1870. *Cate v. Cate* (50 N. H. 144), IX, 179.

64. **Replevin against execution creditor.** An action of replevin will not lie against an execution creditor, sued jointly with an officer, for levy under a void judgment where the creditor did not direct the levy, nor have possession of the goods, that trespass or trover would but *semble*. 1872. *Grace v. Mitchell* (31 Wis. 538), XI, 613.

VI. ON JUDGMENTS.

65. **Of another State.** An action may be maintained on a judgment rendered by a court of competent jurisdiction in another State, notwithstanding an appeal from such judgment is pending. 1870. *Taylor v. Shaw* (39 Cal. 536), II, 478.

VII. ABATEMENT.

66. **By bankruptcy.** An action at law does not abate by the bankruptcy of the plaintiff. 1871. *Conner v. Southern Express Co.* (42 Ga. 87), V, 543.

67. But proving a debt in bankruptcy bars an action previously commenced thereon. *Bennett v. Goldthwait* (109 Mass. 494), XII, 742.

ACTS OF LEGISLATURE—*See* CONSTITUTIONAL LAW; STATUTES.

ADEMPION — *See* WILL.

ADJOINING OWNERS — *See* ACTION, 23, 24.

ADMINISTRATOR — *See* EXECUTOR AND ADMINISTRATOR.

ADMIRALTY LAW — *See* CONSTITUTIONAL LAW; JURISDICTION; SHIP AND SHIPPING.

ADMISSIONS — *See* EVIDENCE.

ADULTERY — *See* MARRIAGE.

ADVERTISING — *See* NOTICE.

AGENCY.

1. Agent of two persons. A person who voluntarily employs the agent of another, knowing the fact of such existing agency, is estopped from pleading the rule that the same person cannot be the agent of two principals having conflicting interests. 1869. *Fitzsimmons v. The Southern Express Co.* (40 Ga. 330), II, 577.

2. Suspension by war. The war of the rebellion did not operate as a suspension of the authority of the agent of a foreign insurance company, located in Richmond, and the receipt by such agent of Confederate money in payment for premiums was binding on the company. *Robinson v. International Life Ass. Co.* (42 N. Y. 547), I, 490. 1870. *Manhattan Life Ins. Co. v. Warwick* (20 Gratt. 614), III, 218.

3. Attorney and client. The relation of attorney and client between a resident of the north and a resident of the south was terminated by the late war. *Blackwell v. Willard* (65 N. C. 555), VI, 749.

4. Notice to agent. The general rule, that notice to an agent is notice to the principal, is subject to the limitation that the notice must be to the agent when acting within the scope of his agency, and must relate to the business in which he is engaged by authority of his principal. 1869. *Congar v. The Chicago, etc.; Railroad Co.* (24 Wis. 157), I, 164.

5. Must adhere to instructions. An agent, whose authority is limited, is bound to adhere faithfully to his instructions, for if he exceeds, violates or neglects them, then he is responsible for all losses which are the natural consequences of his act. 1870. *Whitney v. Merchants' Union Express Co.* (104 Mass. 152), VI, 207.

6. Declaration of agent. To make the declaration of an agent binding upon his principal, it must be within the scope of the agency, and constitute part of the *res gesta*. 1869. *Sweetland v. Illinois, etc., Telegraph Co.* (27 Iowa, 433), I, 235.

7. Payment to agent — set-off. A executed his promissory note to B, in 1861, payable in United States currency. In 1862, A gave B certain claims, also payable in United States currency, for collection, directing him "to exer-

cise his discretion as to procedure to be taken in enforcing collection." B accepted payment of the claims in Confederate currency. In an action against A, on the note, brought in 1868, by the administrator of B, *held*, that the full amount of the collected claims in United States currency was a valid set-off. 1870. *Mangum v. Ball* (48 Miss. 288), V, 488.

8. **Authority of agent holding note of principal.** The payee of a promissory note, payable to her order, delivered it, unindorsed, to an agent, with authority to receive the interest thereon, and to take a new note in renewal, with an indorser. The maker paid the principal and interest to the agent, who absconded with the principal. *Held*, that the agent was not authorized to receive the principal, and that the payment thereof to him did not prevent a recovery upon the note by the holder for the amount of the principal. *Held*, also, that the mere possession, by the agent, of the note unindorsed, was not sufficient, alone, to authorize payment to him. 1872. *Doubleday v. Kress* (50 N. Y. 410), X, 502.

9. — **To authorize carrier to deliver goods sent C. O. D.** An agent had authority to sell goods on commission for his principal; but no authority to sell otherwise than for cash. He did sell on credit and the goods were sent marked C. O. D. The carrier delivered the goods, without receiving the cash, on the written order of the agent. *Held*, that the carrier, who knew of the authority of the agent to sell, was not affected by the limitation of which he had no notice, and the mark C. O. D. did not put him on inquiry, as a matter of law, but was a question to be determined by the jury. 1871. *Daylight Burner Co. v. Odlin* (51 N. H. 56), XII, 45.

10. **Ratification.** Defendant's agent, in procuring plaintiff's promissory note, signed a receipt in the name of his principal, containing an undertaking that the note should be protected at maturity. He was not authorized to sign such a receipt; but defendant used the note in his business, and plaintiff was obliged to pay it at maturity. *Held*, that defendant was liable on the contract contained in the receipt. 1870. *Mundorff v. Wickersham* (68 Penn. St. 87), III, 531.

11. **Liability of principal for fraud of agent.** Defendants, the owners of a cheese factory, leased it to C., who agreed to manufacture into cheese the milk furnished by defendants and others, at a specified rate per hundred pounds. C. had the employment, payment and control of the necessary help to carry on the work, and no right of supervision was reserved by defendants. The sale of the cheese, when prepared for market, was conducted by defendants, who represented it to be of good quality. *Held*, that as to the public and plaintiff, a purchaser, defendants assumed the character of principals, and were liable for the fraud of C. or his subordinates in the manufacture of the cheese. 1872. *Durst v. Burton* (47 N. Y. 167), VII, 428.

12. **A corporation is liable to exemplary damages for the wrongful acts of its servants.** 1869. *Atlanta & Great Western Ry Co. v. Dunn* (19 Ohio St. 162), II, 382.

13. **Voluntary agent.** Where one undertakes, voluntarily and without compensation, to perform an act requiring the trust and confidence of another, he

is responsible for willful and malicious fraud in connection with the undertaking. 1871. *Hammond v. Hussey* (51 N. H. 40), XII, 41.

14. Liability of agent on note signed without authority. Defendant L. had in his possession a pair of horses belonging to J. & Co., his employers, by whom he was authorized to sell or exchange said horses. Defendant exchanged them for a pair of horses belonging to plaintiffs, and in consideration of the agreed difference in the value of the horses exchanged, gave to plaintiffs a promissory note for two hundred dollars, signed J. & Co., per L., plaintiffs supposing defendant had authority to give the note of J. & Co., which in fact he had not. *Held*, that action on the note would not lie against the defendant. 1871. *Sheffield v. Ladue* (16 Minn. 888), X, 145.

15. — description of agent — evidence. An agent signed a bill of exchange in this form, "T. R. T., agent for S. T.," and there was nothing in the body of the bill evincing an intent to bind the principal. *Held*, that it was the bill of the agent and not of the principal, and that parol evidence was not admissible to show an intent to bind the principal. 1871. *Tannatt v. Rocky Mountain National Bank* (1 Col. 278), IX, 156, and *note*, 163.

16. Note of corporation signed by secretary. The secretary of a corporation gave a promissory note, using the words, "We promise to pay," etc., and signed it with his own name, with "Sec'y" affixed, and impressed thereon the seal of the company. *Held*, that he was not personally liable thereon. 1871. *Means v. Swormstedt* (32 Ind. 87), II, 330. *See BILLS AND NOTES.*

17. Del credere agents. Plaintiffs, *del credere* agents of S. & Sons, for the sale of the "Simpson prints," consigned some of the goods to G. O. & Co., commission merchants in a neighboring city, to be sold. G. O. & Co. made sales to defendants in their own name, and, before receiving payment, failed; whereupon plaintiffs notified defendants to pay the amount of sales to them, and not to G. O. & Co. Upon defendants refusing to recognize their claim, plaintiffs brought suit, wherein it was *held*, that they could maintain the action, and that defendants could not set off a claim against G. O. & Co. originating before the sale of the goods. 1871. *Miller v. Lea* (35 Ind. 396), VI, 417.

18. — A del credere agent collected a bill of goods due his principals from a customer, and placed the amount to his own account with his bankers, and purchased of them a gold draft, which he caused to be made payable to his own order without reference to his character as agent, and, after indorsing it to his principals or their order, transmitted it to them in payment not only of the price of the goods sold to the customer, but also of a balance due from himself. The draft was dishonored and returned to the agent, who treated the loss as his own and promised to send another draft, and in the mean time unsuccessfully solicited payment of the draft from the drawers to himself, and then caused himself to be made a preferred creditor of the drawers, who had failed. In an action by the principals against the agent, to recover the amount of the draft, *held* —

1. That the contract resulting from the *del credere* character of the agent was not entirely discharged in the payment of the money by the customer to the agent.

16 AGENCY — ALTERATION OF INSTRUMENT.

2. That the agent was further liable, after the receipt of the money either by virtue of the *del credere* commission, or by his indorsement of the draft, although he had used ordinary diligence in transmitting the money.
3. That the promise of the agent to assume the debt after the dishonor of the draft, was not valid unless he had full knowledge of the neglect of his principals in making the demand, and in giving notice of the dishonor of the draft.
4. The relation of a *del credere* agent to his principal is that of debtor and creditor, and he is bound absolutely to see that his principal is paid. 1870. *Lewis v. Brehme* (33 Md. 412), III, 190.

19. **Delay in collecting by collection agent.** Where an express company receives a draft for collection, with instructions to return it at once if not paid and on demand of the drawee, he refuses to pay it until certain explanations are received from the drawer, whereupon the company consent to wait until the drawee can communicate with the drawer, and he, receiving satisfactory explanations, is ready to pay, and remains so two days without renewed demand from the company, but on the fourth day (the third being Sunday), he becomes insolvent, the company is responsible for the loss occurring to the drawer. 1870. *Whitney v. Merchants' Union Express Company* (104 Mass. 152), VI, 207.

20. **Collection agents — sub-agent.** Plaintiffs, the owners of a promissory note, indorsed it and deposited it with S. for collection. S. indorsed it and sent it to defendants with instructions to collect it, and, when paid, to remit the proceeds. Defendants and S. had been engaged in the business of collecting and had an account current. S. became insolvent; and, at maturity the note was collected by defendants and the proceeds held by them for advances previously made to S. in anticipation of collections. *Held*, that defendants had no title to the proceeds as against plaintiffs. 1872. *Dickerson v. Wason* (47 N. Y. 439), VII, 455.

21. **Undisclosed agency.** A foreign factor sold merchandise to the defendant in his own name, and without disclosing his principal, and received his own check in part payment therefor. *Held*, in an action by the principal to recover the price of the merchandise thus sold, that, in the absence of proof that the defendant knew of the representative character of the factor, the principal could not recover. 1869. *Traub v. Milliken* (57 Me. 63), II, 14.

Of auctioneer. See AUCTION.

For sale of real estate and stocks. See BROKER.

Of carrier, authority of to bind carrier beyond his route. See CARRIER.

Of insurance companies. See INSURANCE.

AGREEMENT — See COMPROMISE ; CONTRACT ; VOLUNTARY AGREEMENT.

ALTERATION OF INSTRUMENT.

1. **Deed.** An alteration in a deed, by a grantee after delivery, will not affect the legal title, although a fraudulent and material change may disable the

ALTERATION OF INSTRUMENT—ANIMALS. 17

holder from bringing an action upon its covenants. 1870. *Woods v. Hilderbrand* (46 Mo. 284), II, 513.

2. — Where an alteration is apparent on a note or other written instrument, the question whether such alteration was made before or after execution must be submitted to the jury. 1871. *Hunt v. Gray* (35 N. J. 227), X, 232, and *note*, 239.

3. — Any alteration of an instrument by the party claiming an interest under it avoids such instrument. *Ib.*

4. — If an agent intrusted with a note for the purpose of having it discounted in bank, alter it, such alteration will not avoid such note, such act not being imputable to the principal. *Ib.*

5. — If an instrument be altered by the party holding, by mistake, or without any fraudulent intent, such alteration will not impair the right of suit founded on the consideration for which such instrument was given. *Ib.*

See **BILLS AND NOTES.**

ALIEN — See **ESCHEAT**; **OFFICE.**

ALLUVION — See **ACCRETION.**

ANCIENT LIGHTS — See **EASEMENTS.**

ANIMALS.

1. **Property in: otter.** An otter is an animal valuable for its fur, and though it be one *fera natura*, yet, if it be reclaimed, confined or dead, the stealing of it from its owner is larceny. 1871. *State v. House* (65 N. C. 315), VI, 744.

2. **The regulation of the keeping of dogs,** and the authorization of their summary destruction when prescribed regulations are not complied with, are within the police power of the legislature. 1868. *Blair v. Forehand* (100 Mass 136), I, 94.

3. — An officer having a warrant from the proper authorities, directing him to kill all dogs not "licensed and collared," as required by statute, which statute provides that such dogs may be killed "whenever and wherever found," has a right peaceably to enter for that purpose, without permission, upon the close of the owner or keeper of such a dog, and there kill it. *Ib.*

4. — An officer who, under authority of law, kills a dog within the owner's close, and then leaves the body with the collar still on, is not liable for a conversion of the collar. *Ib.*

5. **The owner of a ferocious dog,** knowing the vicious propensities of the animal, keeps it at his own risk, and is responsible for any injury inflicted by it upon a person who is free from fault. 1871. *Laverone v. Mangianti* (41 Cal. 138), X, 269, and *note*, 270.

6. **Dogs injuring sheep.** A statute provided that the owner of sheep killed or injured by dogs, may present proof of his damages to the selectmen of the town, and obtain an order for the amount on the town treasurer, and that the

18 ANIMALS—ARBITRATION AND AWARD.

town may thereupon recover the full amount of such order from the owner of the dog. *Held*, unconstitutional in so far as it undertook to establish the damage without giving the owner of the dog an opportunity to be heard; but that the town could, nevertheless, recover from the owner of the dog the actual amount of the damage which the jury who try the case find the owner of the sheep suffered, not exceeding the amount of the order. 1868. *East Kingston v. Towle* (48 N. H. 57), II, 174.

7. — In an action against the owner of a dog for injuries done by it to sheep, evidence tending to prove that the dog has killed or worried sheep before, is admissible. *Id.*

Transportation of. See CARRIERS.

Infection by. See ACTION.

APPEAL.

The refusal to grant an appeal is a judicial act and a justice of the peace is not liable to an action for such refusal though erroneous. 1868. *Jordan v. Hanson* (49 N. H. 199), VI, 508.

APPLICATION OF PAYMENT — See PAYMENT.

APPRAISEMENT — See LANDLORD AND TENANT.

ARBITRATION AND AWARD.

1. *Award.* When arbitrators are constituted by the parties the judges of the law, the facts and the equity of the case, their award will not be annulled if it appear that it is within the terms of the submission, fairly construed, and furnishes a rule sufficiently certain to define and limit the rights of the parties and under which those rights may be enforced—no mistake of law, or of any material fact appearing on the face of the award, or by admission of the arbitrators, nor any partiality or corrupt conduct on their part, or misbehavior in the parties, being pretended. 1864. *Harris v. Social Manufacturing Company*, (8 R. I. 183), V, 549.

2. An award may be good in part and bad in part; and sometimes the valid part may be sustained and may support an action for breach of the promise to perform the general award; but where the different parts of the award are so dependent upon each other that the good cannot be separated from the bad, so that the former, alone, shall express the full intention of the arbitrators, do full justice to both parties, and satisfy the ends intended to be accomplished by the submission, the whole must be set aside as void. 1870. *Whitcher v. Whitcher* (49 N. H. 176)), VI, 486, and *note*, 498.

3. *Award bad for uncertainty.* An award that the defendants have a right to keep up and maintain their dam at a certain height, and to keep thereon flash-boards twelve inches wide, at all times except in times of "fresher," *held* bad for uncertainty, the word "fresher" so varying in its meaning as to necessitate constant litigation. 1868. *Harris v. The Social Manufacturing Company* (9 R. I. 99), XI, 224.

ARMS — See CONCEALED WEAPONS.

ARREST.

1. **Without warrant.** A constable or officer is not bound to procure a warrant before arresting a person whom he has probable cause to believe guilty of a felony, even though there may be no reason to fear the escape of such person in consequence of the delay in procuring the warrant. 1865. *Wade v. Chaffee* (8 R. I. 224), V, 572.

2. — A constable has a right by virtue of his office, and without a warrant, to enter any house, the door of which is unfastened, in which there is a noise amounting to a breach of the peace, and to arrest any person disturbing the peace there in his presence. 1868. *Commonwealth v. Tobin* (108 Mass. 426), XI, 375.

3. — Any affray or assault is a disturbance of the peace. *Ib.*

4. — The unlawful omission of an officer to make a subsequent complaint against a person, whom he has lawfully arrested without a warrant, is no defense to an indictment of the person for assaulting the officer in resisting the arrest. *Ib.*

5. — A plea justifying an arrest, without a warrant, on suspicion of felony should set forth the grounds of the suspicion. 1865. *Wade v. Chaffee* (8 R. I. 224), V, 572.

6. **Unlawful detention.** Plaintiff being drunk and disorderly in a public place, defendant, a police officer, arrested him without a warrant, as directed by a statute for such case provided, and which also directed that the offender be taken before a magistrate. Defendant kept plaintiff in custody for an hour and discharged him without taking him before a magistrate. *Held*, that the defendant was liable for an assault and false imprisonment. 1871. *Brock v. Stimson* (108 Mass. 520), XI, 390.

7. **Of insane person.** An officer is not authorized to arrest a man without a warrant, on the ground that he is insane unless he is dangerous. 1871. *Look v. Deen* (108 Mass. 116), XI, 323.

8. **Privilege from arrest.** The privilege from arrest of a member of congress, under the provisions of the constitution, does not extend to forty days or more before and after a session, but is limited to a reasonable time for going and returning. 1867. *Hoppin v. Jenckes* (8 R. I. 453), V, 597.

9. **Arrest after escape.** Where a creditor brings an action against the sheriff for the escape of a prisoner in execution, he cannot afterward insist on the re-arrest and imprisonment of the prisoner. Nor has the sheriff, after the recovery of a judgment against him for the escape, the right to re-arrest and imprison the prisoner except within a reasonable time. 1871. *Ex parte Volts* (37 Ind. 175), X, 86.

10. **Recognizance.** Where a recognizance for the appearance of a principal is joint, and not several, the failure of the principal to appear is a breach of the condition, and it is not necessary to call upon the bail to produce the body of such principal. 1869. *Mishler v. Commonwealth* (62 Penn. St. 55), I, 377.

11. — Where the recognizance has been forfeited by a breach of its con-

ditions the forfeiture is not rendered invalid by a subsequent respite of the recognizance. *Id.*

12. — Where the condition of the recognizance is that a prisoner shall appear and not depart the court without leave, the mere appearance of the prisoner, and the departure without leave, does not release the surety. It is at all times in the discretion of the court, at any stage of a criminal trial, to call the defendant and forfeit his recognizance. *Id.*

13. Action on recognizance — defense. In an action on a forfeited recognizance, the defense was that the criminal could not appear when called, having been imprisoned on another charge in another State. *Held*, not a good defense. 1869. *Taintor v. Taylor* (36 Conn. 242), IV, 68.

14. — C. was arrested on a criminal charge and was bailed. He was subsequently arrested and imprisoned for another crime, by the United States military authorities. *Held*, a good defense in an action against the sureties on the bail bond. 1869. *Belding v. State* (25 Ark. 815), IV, 26.

See CRIMINAL LAW.

ARSON — *See CRIMINAL LAW.*

ASSAULT AND BATTERY.

1. Agreement to fight. In an action for assault and battery, the fact that plaintiff and defendant fought by agreement or mutual consent, is no bar to the recovery, but may be considered in mitigation of damages. 1870. *Adams v. Waggoner* (38 Ind. 581), V, 280.

2. Damages. That defendant has been criminally proceeded against for an assault and battery is no bar, in an action of trespass, to allowing exemplary damages. 1873. *Hoadley v. Watson* (45 Vt. 289), XII, 197.

ASSESSMENTS.

For local improvements. See MUNICIPAL CORPORATIONS; TAXES.

ASSESSORS — *See CERTIORARI.*

ASSIGNMENT.

1. Of mortgage — record of. The mortgagee of premises assigned the mortgage to plaintiff. The premises were afterward and after the maturity of the mortgage, conveyed in fee by the mortgagor to the mortgagee, and by him to the defendant. The assignment of the mortgage was not recorded. *Held*, that plaintiff's lien was not invalidated by failure to have the assignment recorded, and that it was prior to defendant's title. 1870. *Purdy v. Huntington* (43 N. Y. 884), I, 532.

2. For benefit of creditors. An assignment for benefit of creditors is not contrary to the spirit of the bankrupt act. 1870. *Beak v. Parker* (65 Penn. St. 262), III, 625. *See BANKRUPTCY.*

3. **Limited by schedule.** An insolvent debtor made a deed of assignment, wherein it was recited that the assignor "is indebted to divers persons, etc., and is desirous of providing for the payment thereof by assignment of *all* his property." And in the granting clause the property was described as "all his goods, etc., *chooses in action* and property of every name and nature whatever belonging to him, and which are more particularly and fully enumerated in the schedule hereto annexed, marked schedule A." *Held*, that the general words of the deed were limited and controlled by the schedule, and that a sum of money not named in the schedule did not pass to the assignee under the deed. 1860. *Mims v. Armstrong* (81 Md. 87), I, 22.

See LIEN; REPLEVIN.

ASTRAY.

One, whose property has been thrown by a flood upon the land of another, is not liable for damages unless he reclaim the property. 1870. *Shelton v. Sherman* (42 N. Y. 484), I, 569; see, also, *Livesey v. Philadelphia* (64 Penn. St. 106), III, 578.

ATTACHMENT.

1. **Delay in removing property attached.** An officer attached an attorney's desk and library of not more than \$300 in value, situated in the office of a broker, kept possession of the office for more than five hours of daylight, and then, after demanding and being refused a key, obtained one from a locksmith for the purpose of continuing his possession. The broker caused another lock to be put on the door, and after giving the officer notice to remove the goods immediately, and his refusing to do so, locked him in for the night. In an action for assault and false imprisonment, *held*, that the officer delayed removing the goods for an unreasonable length of time; that he abused his authority and became a trespasser, and that he could therefore not recover. 1869. *Williams v. Powell* (101 Mass. 467), III, 396.

2. **Fraudulent sale — attachment of money.** H. loaned money to P. at a usurious rate of interest, and after the usury was consummated, H., with intent to defraud his creditors, conveyed land, without consideration, to G., who, in turn, at H.'s request, conveyed it to J., the son of H., also without consideration. Subsequently P. sued H. for the excess of interest, obtained a judgment and levied upon the land. Thereupon J. conveyed it to M., a *bona fide* purchaser, for a valuable consideration. *Held*, that the purchase-money in J.'s hands was attachable under P.'s judgment. 1870. *Heath v. Page* (68 Penn. St. 106), III, 538.

3. **Of note unavailing against holder without notice.** A on the 1st of March, 1866, gave his negotiable promissory note to B, payable in two years. C, a creditor of B, served an attachment on A, as garnishee, in November, 1867. B indorsed the note February 23, 1867, to D, *bona fide* for value, D having no notice of the attachment, but having heard that B had failed. After maturity, A paid the amount of the note to D. *Held*, that the note was discharged, and that A was not liable under the attachment. 1871. *Day v. Zimmerman* (68 Penn. St. 72), VIII, 157.

See BANKRUPTCY; CARRIER; TENANTS IN COMMON.

ATTORNEY.

1. One co-defendant may employ an attorney for the other co-defendants, and the appearance of such an attorney for all will bind all. If the attorney gives an unauthorized consent that judgment may be rendered against them, the remedy, if there is any other than against the attorney, is by application directly to the court which rendered the judgment, or by writ of error, and not by *audita querela*. *Abbott v. Dutton* (44 Vt. 546), VIII, 394.

2. Unauthorized appearance. *It seems* that an appearance by an attorney binds the party for whom he appears, whether the attorney was employed by the party or not. *Ib.*

3. Champerty. A contract between an attorney and his client that the attorney shall prosecute a claim at his own cost, for a share of the recovery, is champertous and illegal. 1866. *Martin v. Clarke* (8 R. L. 389), V, 586.

4. — An attorney was employed to bring an action, the client agreeing to give or allow and pay him the first fifty dollars collected by him therein. *Held*, not champertous. 1872. *Scott v. Harmon* (109 Mass. 237), XII, 685.

5. Disbarring. Participation, by an attorney, in making pretended gifts as a means of giving notoriety to an exhibition, innocent in itself, is not sufficient ground to authorize his name to be stricken from the roll. 1871. *Dickens' Case* (67 Penn. St. 169), V, 420.

6. — But where an attorney conspires to get an opposing attorney drunk in order to gain an advantage in a case about to come on he is liable to expulsion from the bar. *Ib.*

7. For administrators — limitation of action for fees. An attorney was retained for administrators in proceedings on their final accounting. In an action by him against them for fees and disbursements *held*, (1) that the statute of limitations did not begin to run until the termination of the proceedings for which he was employed; and (2) that they were jointly and personally liable. 1871. *Mygatt v. Wilcox* (45 N. Y. 306), VI, 90.

8. Compensation — lien. An attorney at law has no lien upon a judgment for his fees earned in the action. 1869. *Foreythe v. Beveridge* (52 Ill. 268), IV, 612.

9. — The parties to an action, in which defendant had been defaulted and case continued, made a settlement. *Held*, that plaintiff's attorneys were not entitled to have judgment rendered in favor of plaintiff against defendant to secure a lien for counsel-fees. 1870. *Hooper v. Welch* (43 Vt. 169), V, 267.

10. — Plaintiff, a solicitor, undertook the prosecution of a suit in chancery, without a stipulated price or time of payment, but, during the progress of the suit, withdrew in consequence of being refused an advance of money in part compensation for services rendered in the suit. The suit was prosecuted to a successful termination by another solicitor, and the land which was the subject-matter in suit, was sold by the complainants therein to a third person. *Held*, that plaintiff was not entitled to be decreed the payment of a reasonable sum out of the purchase-money, as a compensation for his services, the lien as solicitor not having attached. 1870. *Stewart v. Flowers* (44 Miss. 513), VII, 707.

11. — Where a judgment is recovered for costs only, the judgment debtor is bound to take notice of the lien of the attorney of the judgment creditor thereon, and cannot satisfy the judgment by payment to any one but the attorney. Otherwise where the judgment is for damages and costs. If the attorney claims compensation, beyond the tax costs, under an agreement, with his client, express or implied, his lien for such compensation can be protected against a payment to the client only by notice to the judgment debtor. 1872. *Marshall v. Meech* (51 N. Y. 140), X, 572.

12. To collect claims against the United States. Plaintiff agreed to collect for defendant a claim against the government for a percentage thereof. The government paid the money to defendant. In an action for the percentage, *held*, that the agreement was in violation of the act of congress to prevent frauds upon the treasury, and was void. 1872. *Jones v. Blackledge* (6 Kans. 562), XII, 508.

See SLANDER AND LIBEL.

AUCTION.

1. The agency of an auctioneer for a purchaser commences with the bidding and terminates at the close of the sale, and, unless the name of a purchaser is entered in the sale books at the time of the sale, the purchaser is not bound. 1872. *Walker v. Herring* (31 Gratt. Va. 678), VIII, 616.

2. An auctioneer may sue in his own name, a purchaser at an auction sale, to recover his fees, when the conditions expressly stipulate that an auctioneer's fees, of a specified sum, shall be paid to the auctioneer on the day of sale; but his right to recover will depend on the validity of the contract to purchase as between buyer and seller. 1871. *Johnson v. Buck* (35 N. J. 388), X, 243.

3. A house fitted only with cold water was advertised for sale at auction as fitted with "hot and cold water," and subject to examination at any time before sale. The mistake was announced by the auctioneer at the opening of the sale. The property was sold to K., who had read the advertisement but had not examined the house nor heard the announcement as to the mistake. He signed the agreement to comply with the terms of sale, one of which was, that the purchaser should pay the auctioneer \$300 to bind the bargain and forfeit that amount if he failed to comply with the terms. At the head of this agreement was the advertisement with the words "hot and" erased. On examining the house and finding no hot water fixtures, K. refused to complete the sale or pay the \$300. In an action by the auctioneer for that sum, *held*, that the sale was binding, and that the action was properly brought in the name of the auctioneer. 1869. *Thompson v. Kelly* (101 Mass. 291), III, 858.

4. Memorandum—terms of sale. The signature of the purchaser to the conditions of sale made by the auctioneer's clerk, as the bids are publicly announced, is a sufficient signing within the statute of frauds. 1871. *Johnson v. Buck* (35 N. J. 388), X, 243.

5. To satisfy the statute it is sufficient that the terms of the bargain may be gathered from two or more separate papers, if the signed memorandum contains such reference to the other papers as to make the latter part of the former

but the connection between the signed and unsigned papers cannot be made by parol evidence that they were intended by the parties to be read together or of facts and circumstances from which such intention may be inferred. *Ib.*

6. — Conditions of sale read before the bidding commenced, but not annexed to the catalogue on which the purchasers' names were entered, or referred to therein, cannot be held to supply the terms of sale omitted from the catalogue. *Ib.*

7. — On a sale at public auction the terms of sale were to be a credit of nine months on notes with approved security, waiving valuation and appraisement laws. *Held*, that a memorandum of sale made by the clerk, which did not state such terms, was void under the statute of frauds. 1872. *Norris v. Blair* (39 Ind. 90), X, 135.

8. When contract is entire. Where several parcels of goods are sold at auction to the same purchaser, on separate bids, the contract is an entirety. 1871. *Jenness v. Wendell* (51 N. H. 63), XII, 48.

See SALE.

AUTREFOIS ACQUIT AND CONVICT — *See CRIMINAL LAW.*

AVERAGE — *See SHIP AND SHIPPING.*

BAGGAGE — *See CARRIER.*

BAILMENT.

1. Possession sufficient to maintain action. The possession of goods acquired by plaintiff under a bill of lading is sufficient to maintain an action against one who does not show a better title. 1868. *Adams v. O'Connor* (100 Mass. 515), I, 187.

2. — Though the plaintiff had only a special property in the goods to secure advances made upon them, he can recover the whole value of them from a purchaser for cash, and hold the surplus beyond his own interest for the general owner. *Ib.*

3. Of stock as security — pledge by bailee. Where the owner of bank shares delivers to his broker, to secure a balance of account, the certificate of the shares, indorsed with blank assignment, and irrevocable power of transfer signed and sealed by himself, and the brokers, without his knowledge, pledge the shares with other securities for advances, one who pays the advances at the brokers' request and in good faith receives from them the certificate of the shares, and the other securities is entitled to hold the shares as against the owner, for the full amount of the advances remaining unpaid after the other securities are exhausted. 1871. *McNeil v. Tenth National Bank* (46 N. Y. 825), VII, 841.

4. Delivery by bailee to bailor's wife on forged order. The defendant as bailee held property of plaintiff's under instructions not to deliver it to any one without plaintiff's written order. Defendant delivered the property to plaintiff's wife upon an order which proved to be a forgery. *Held*, that defendant was liable for the value of the property. 1873. *Kowing v. Manley* (49 N. Y. 92), X, 346.

BALLOT — See ELECTION.

BANKRUPTCY.

- I. STATE INSOLVENT LAWS.
- II. JURISDICTION OF STATE COURTS.
- III. PROOF OF DEBTS.
- IV. EFFECT OF BANKRUPTCY.
- V. WHAT PASSES TO ASSIGNEE.
- VI. PAYMENTS TO BANKRUPT — CONVEYANCES.
- VII. THE DISCHARGE.
- VIII. MISCELLANEOUS.

I. STATE INSOLVENT LAWS.

1. **Effect of law on State insolvent law.** The passage of the bankrupt law of the United States, of 1867, suspended the operation of a State insolvent law, so far as the provisions of the former applied to the subject-matter of the latter. 1867. *In the matter of Reynolds* (8 R. L. 485), V, 615.

2. — The bankrupt laws did not nullify or supersede the State insolvent laws, and jurisdiction may be exercised under the latter, at least until proceedings have been commenced under the former. 1871. *Reed v. Taylor* (32 Iowa, 209), VII, 180.

3. **Poor debtor law.** The bankrupt act does not suspend or supersede a "poor debtor law" of a State, which permits a debtor, taken on execution, to be discharged on making a general assignment of his property for the benefit of the judgment creditor. 1869. *Marsh v. Hall* (9 R. I. 218), XI, 245.

4. **Assignment for benefit of creditors.** A creditor of P. commenced an action against the firm in 1869. P. then made an assignment for the benefit of his creditors, and subsequently the action was prosecuted to judgment. *Held*, that the United States bankrupt law of 1867 had no effect upon the assignment, and that it was valid under the law of Pennsylvania as against the judgment-creditor who levied on the assigned property under his judgment. 1870. *Beck v. Parker* (65 Penn. St. 262), III, 625.

II. JURISDICTION OF STATE COURTS.

5. **Jurisdiction of State courts.** A State court has no jurisdiction of a suit by an assignee to set aside a conveyance made by a bankrupt, in fraud of the bankrupt act. 1872. *Voorhies v. Friebe* (25 Mich. 476), XII, 291.

6. — An action by an assignee in bankruptcy, under section 35 of the bankrupt law, to recover the value of goods transferred to defendants by the bankrupt in fraud of the provisions of said act, is penal in its character, and will not be entertained by the State courts. 1878. *Brigham v. Clafflin* (81 Wis. 607), XI, 628.

7. — In an action brought in a State court, by an assignee in bankruptcy to obtain control of certain property of the bankrupt alleged to have been fraudulently conveyed by him, *held*, that the State courts had concurrent jurisdiction with the federal courts to make a decree of title and possession of the property sued for. 1869. *Boone v. Hall* (7 Bush, Ky. 66), III, 288.

8. — An assignee in bankruptcy may sue or be sued in the courts of the State, on claims for or against the estate of the bankrupt, our courts having concurrent jurisdiction with the United States courts in the premises. 1873. *Cogdell v. Ezum* (69 N. C. 464), XII, 657.

III. PROOF OF DEBTS.

9. **Fiduciary character.** A factor or commission merchant stands in a fiduciary relation to his principal in respect to the proceeds of sales of commission goods, within the meaning of section 33 of the United States bankrupt act of 1867. 1871. *Lemcke v. Booth* (47 Mo. 385), IV, 326.

10. — The United States bankrupt act of 1867, providing that no debt of the bankrupt created "while acting in any fiduciary character shall be discharged" by the decree, does not apply to one who receives accepted bills of exchange for collection, with instructions to apply the proceeds, so far as required, to the payment of a debt due to the estate of which she was administratrix, and to return the balance. 1870. *Cronan v. Cotting* (104 Mass. 245), VI, 282.

11. — *It seems*, that the phrase "fiduciary character" applies only to a relation existing previous to, or independent of, the particular transaction from which the debt arises. *Ib.*

12. **Debt created by fraud.** The indorser of a bill, who was induced to indorse it by the fraudulent representations of the drawer, was compelled to pay it, and recovered judgment against the drawer for the amount so paid. In an action on the judgment, defendant pleaded his discharge in bankruptcy. *Held*, that the debt sued on was not "created by fraud" within the meaning of the bankrupt act, and therefore that the plea was good. 1873. *Palmer v. Preston* (45 N. Y. 154), XII, 191.

13. **Debt provable.** A judgment in an action of trespass for assault and battery is a debt provable under the bankrupt act. 1869. *Manning v. Keyes* (9 R. I. 224), XI, 249.

14. **The sureties in an attachment bond are released by the discharge in bankruptcy of the principal before judgment is rendered against him.** 1870. *Payne v. Able* (7 Bush, Ky. 344), III, 316.

15. — On application for a discharge, in bankruptcy, a surety may prove his contingent liability; but if he neglects so to do, and after the discharge, pays the security debt when due, he has no remedy against the bankrupt. 1870. *Lipscomb v. Grace* (26 Ark. 231), VII, 607.

16. **Proving a debt for goods sold and delivered, in bankruptcy proceedings, bars an action on the debt previously commenced.** 1872. *Bennett v. Goldthwait* (109 Mass. 494), XII, 742.

IV. EFFECT OF BANKRUPTCY.

17. **Dissolves partnership.** The bankruptcy of a copartner dissolves the copartnership and constitutes the assignee and the solvent partners tenants in common, or joint owners of the partnership property. In a suit, respecting the partnership property, the assignee and solvent partners must unite. 1871. *Halsey v. Norton* (45 Miss. 703), VII, 745.

18. **Does not abate action.** An action at law does not abate by the bankruptcy of the plaintiff, and if the assignee in bankruptcy be discharged, without any interference by him with the suit, it may proceed in the name of the bankrupt, the presumption, in the absence of any proof to the contrary, being that the action is proceeding for the benefit of the true owner, whoever he may be. 1871. *Conner v. Southern Exp. Co.* (42 Ga. 37), V, 548.

19. **Sale on execution after adjudication — sheriff.** Notice of an adjudication in bankruptcy does not justify a sheriff who has seized property under an execution from a State court in refusing to sell such property where it has not been ordered into the bankruptcy court. 1869. *Sharman v. Howell* (40 Ga. 257), II, 576.

20. **Suit to enforce mechanics' lien.** Under a statute creating a mechanics' lien on a building as soon as the labor is performed, or the materials furnished and used, the statement required by the statute may be filed and suit commenced in the State court to enforce the lien, after the commencement of proceedings to declare the owner of the building a bankrupt; but the court will order the suit to stand continued to await the result of the action of the bankrupt court. 1869. *Clifton v. Foster* (103 Mass. 238), IV, 539, and *note*, 548.

21. **Attachment — effect of adjudication.** The effect of an adjudication of bankruptcy, is to bring all the bankrupt's assets at once into the custody of the law and to prevent the subsequent attachment by one creditor for his own benefit. 1869. *Williams v. Merritt* (103 Mass. 184), IV, 521.

22. — D. was adjudged a bankrupt on his own petition in February, but no meeting of his creditors was held or assignee appointed until March 10. On March 9; the defendant, as deputy sheriff, attached certain property in a suit against D. The plaintiff claims title thereto under a bill of sale from D. dated in January, and sued for its conversion. The defendant alleged that the bill of sale was given without consideration, and for the purpose of defrauding D.'s creditors. *Held*, that the defendant could not justify under his writ, and that the plaintiff could recover. *Id.*

23. — The sheriff attached certain property of a debtor, on mesne process, and delivered it to a receptor. Afterward judgment was rendered in the suit, execution was issued, and the sheriff, having failed to obtain payment thereof of the debtor, made demand of the property, of the receptor, whereon to levy. The receptor refused to deliver the property; and on the next day the debtor filed his petition in bankruptcy. *Held*, that the proceedings in bankruptcy were no defense to an action brought by the sheriff against the receptor for the amount of the execution. 1870. *Parks v. Sheldon* (36 Conn. 486), IV, 95.

24. **Right of marshal to seize property held on execution.** A United States marshal, by virtue of a warrant in bankruptcy, took property of the bankrupt from the custody of the State sheriff, who had seized it on execution against the bankrupt, before the commencement of the proceedings in bankruptcy. *Held*, that the marshal was liable for damages at the suit of the sheriff. 1871. *Mollison v. Eaton* (16 Minn. 426), X, 150.

See INSOLVENT LAWS.

V. WHAT PASSES TO ASSIGNEE.

25. When right of action does not pass to assignee. To the plea that the plaintiff is a bankrupt, and that all his estate vested in his assignees, it is a good replication that the whole beneficial interest in the contract or demand in suit was vested, by prior assignment, in a third party, for whose benefit the suit is prosecuted. 1871. *Rhoades v. Blackiston* (106 Mass. 384), VIII, 332.

26. — In an action for an alleged breach of contract, it appeared that the plaintiff made the contract, in his own name, in the course of a business which he was carrying on for L., and which he had previously transferred to L. as security for a debt, with the agreement that L. should furnish all the capital, and receive all the profits, except enough to support plaintiff and his family, until the debt was paid, when the business and the profits should again become plaintiff's. After the alleged breach by defendant, plaintiff became bankrupt. *Held*, that plaintiff could maintain the action in his own name, and that his right of action did not pass to his assignees in bankruptcy. *Ib*.

27. An action of review is a *chose in action* within the meaning of the United States bankrupt law, and, in virtue of an adjudication in bankruptcy, vests in the assignee, who, alone, may prosecute or defend it in his own name. 1869. *Zollar v. Janvin* (49 N. H. 114), VI, 469.

28. Vendor's interest in contract to convey. A vendor who has contracted to sell his land, is in equity a trustee for the purchaser, but if he has not received the whole of the purchase-money, he is not a mere naked trustee, and upon becoming a bankrupt, his interest in the land will, by proper assignments, pass to the assignee in bankruptcy under the fourteenth section of the bankrupt act. 1871. *Swope v. Rouse* (65 N. C. 84), VI, 735.

29. — To a bill for a specific performance of a contract to convey land, the assignee of the vendor who has not received the whole of the purchase-money and who has become bankrupt, must be made a party. *Ib*.

30. — Where a defendant to a bill for the specific performance of a contract to convey land, alleges and relies upon his certificate of discharge as a bankrupt, the fact of a proper assignment of his estate to his assignee will be presumed though it is not specifically alleged, where there is no allegation or proof to the contrary. *Ib*.

31. Exempt property. Plaintiff, having two pairs of oxen, sold one pair to L., who took them away on condition that they were to become his when he paid for them. *Held*, that the pair remaining were the *only* pair of oxen plaintiff then owned, and as such were exempt from attachment, and being so exempt, would not pass to the assignee in bankruptcy of plaintiff. 1872. *Wilkinson v. Wait* (44 Vt. 508), VIII, 391.

32. — Defendant, a constable, attached property of plaintiff by law exempt from attachment, and subsequently surrendered it under protest to the assignee in bankruptcy of plaintiff. *Held*, that the assignee, having no right to take the property, defendant was liable to trover. *Ib*.

VI. PAYMENTS TO BANKRUPT — CONVEYANCES.

33. Payment to bankrupt, made after publication of notice of warrant in bankruptcy, as required by section 11 of the bankrupt act, although made in good faith and without knowledge of the bankruptcy, is no protection against the bankrupt's assignee. 1869. *Stevens v. Mechanics' Savings Bank* (101 Mass. 189), III, 835.

34. — Payment of deposits, by a bank, to a bankrupt at any time after the filing of the petition, although made in good faith and without actual notice of the proceedings in bankruptcy, will not discharge the bank from liability to the assignees for the amount so paid; but it must be proved that the deposits were the property of the bankrupt at the time of filing the petition. 1870. *Mays v. The Manufacturers' National Bank* (64 Penn. St. 74), III, 573.

35. Conveyance in fraud of the act: mortgage. A manufacturer of bricks gave a mortgage upon bricks to secure an existing debt and future advances. The mortgaged property was subsequently sold and delivered with the permission of the mortgagees; and a new mortgage was given on other bricks expressed to be in consideration of the release of the claim of the prior mortgage. The manufacturer was, at the time of giving the new mortgage, insolvent in fact, although he did not file his petition in bankruptcy until a month later. In an action by the assignees in bankruptcy to recover for the property conveyed under this last mortgage, the jury found an intention on the part of the mortgagor to give a preference to the mortgagees, and also that the mortgagees had reasonable cause to believe the insolvency and such intention of the mortgagor. Held, that the new mortgage must be regarded as a new security, and not a mere substitution of securities, and that it was void as against the assignees in bankruptcy, under the United States bankrupt act, section 35. 1869. *Forbes v. Howe* (102 Mass. 427), III, 475.

VII. THE DISCHARGE.

36. Impeaching discharge: jurisdiction: fraud. A discharge in bankruptcy cannot be impeached in a State court for any cause which would have prevented the granting of the discharge under the bankrupt act, or would have been sufficient ground for annulling the discharge in the United States court under that act. 1869. *Corey v. Ripley* (57 Me. 69), II, 19.

37. — The authority to set aside and annul a discharge in bankruptcy, under the act of 1867, rests exclusively in the United States courts. *Ib.*

38. — A discharge in bankruptcy, obtained after the commencement of an action on a promissory note provable as a debt under the bankrupt act, when pleaded in bar of such action, may be attacked therein by showing that it was obtained upon proceedings of which the plaintiff was fraudulently deprived of notice. 1871. *Batchelder v. Low* (43 Vt. 662), V, 311.

39. — The mere omission of the name of a creditor and his debt from the schedule of creditors and indebtedness does not, in the absence of design or fraud, affect the validity of a discharge in bankruptcy, as to such creditor. 1870. *Payne v. Able* (7 Bush, Ky. 344), III, 316.

40. — The omission of a petitioner in bankruptcy, under the act of 1867, to include a creditor's claim in his sworn schedule of debts, or to see that the creditor has notice of the proceedings, must be shown to be willful and fraudulent in order to avoid the discharge. 1871. *Symonds v. Barnes* (59 Me. 191), VIII, 418.

41. — A creditor who was fraudulently omitted from the schedule filed by a bankrupt in proceedings under the bankruptcy act, and who had no actual knowledge of the proceedings until after a granting of a discharge to the bankrupt, applied to the United States district court, under section 34 of the act, to annul the discharge for that cause. *Held*, that he could not afterward impeach the discharge in an action on his debt in a State court. 1871. *Burpee v. Sparhawk* (108 Mass. 111), XI, 320.

42. — A certificate of discharge in bankruptcy, under the act of 1867, chapter 176, cannot be impeached in a State court, in an action upon a debt of a nature to be barred by a valid discharge, on account of the fraudulent conveyance of property by the bankrupt. 1871. *Way v. Howe* (108 Mass. 502), XI, 386.

43. A discharge in bankruptcy releases the bankrupt from his liability as surety on a guardian's bond, such a liability being a contingent liability within the meaning of section 19 of the bankrupt law of 1867. 1871. *Jones v. Knox* (46 Ala. 53), VII, 583.

44. When discharge a bar. In an action on a judgment obtained in New Hampshire, after the defendant had been adjudged a bankrupt, on a debt provable in bankruptcy, a certificate of his subsequent discharge in bankruptcy is no bar to the action in Massachusetts, there being no evidence of a different law and practice in New Hampshire. 1869. *Bradford v. Rice* (103 Mass. 472), III, 488.

45. — Where it appears that a discharge in bankruptcy has been obtained by fraud, it is no bar to an action on a prior debt; notwithstanding the discharge has not been set aside in a regular proceeding for that purpose. 1869. *Beardsley v. Hall* (86 Conn. 270), IV, 74.

46. Discharge after judgment will not stay appeal. After judgment in an action and appeal taken by the defendant, he was adjudged a bankrupt by the register in bankruptcy, and filed the adjudication in the appellate court. On application for a stay of proceedings, *held*, that the judgment was final within the contemplation of section 21 of the bankrupt act, and that the stay could not be granted. 1870. *Merritt v. Glidden* (39 Cal. 559), II, 479.

47. — A discharge in bankruptcy will not prevent a creditor from taking a decree *in rem* against a fund upon which he obtained a lien, by trustee attachment, more than four months prior to the commencement of the proceedings in bankruptcy. 1871. *Stoddard v. Locke* (43 Vt. 574), V, 308.

VIII. MISCELLANEOUS.

48. Attachment—computation of time. A debtor's property was attached on March 8, at 7 o'clock P. M., and his petition in bankruptcy was filed July 8, succeeding, at 8 o'clock P. M. *Held* that the maxim that in law there is no

fraction of a day, did not apply, and that the attachment was dissolved under section 14 of the bankrupt act, dissolving attachments made within four months of the commencement of proceedings in bankruptcy. 1872. *Westbrook Manufacturing Co. v. Grant* (60 Me. 88), XI, 181.

49. **Limitation of suits by assignee.** A, a bankrupt, brings a suit in his own name against B, on the 19th day of September, 1870; on the 11th of March, 1872, A's assignee in bankruptcy, C, who was appointed on the 25th of February, 1869, is made party plaintiff in the suit commenced by A. *Held*, that the right of action against B accrued to C, the assignee, at the time of his appointment, and that the two years' limitation in the bankrupt act, of suits by assignees, was a bar. *Cogdell v. Eatum* (69 N. C. 464), XII, 657.

50. **Lien of State for taxes.** A sale of the land by the assignee of a bankrupt does not divest the lien of the State upon the land for taxes due on it, even though sold by the assignee, free of incumbrance. 1872. *Stokes v. State* (46 Ga. 412), XII, 588.

51. **Lien on funds paid into court: costs.** Funds were paid into a State court for J. S., and other persons obtained judgments for costs against him, and execution was issued thereon, but returned unsatisfied. *Ordered*, that the amount of the costs be deducted from the funds, notwithstanding J. S. had been adjudged a bankrupt about the time the judgments for costs were obtained. 1872. *Clerk's Office v. The President, Directors and Company of the Bank of Cape Fear* (66 N. C. 214), VIII, 506.

BANKS AND BANKING.

- I. AUTHORITY OF OFFICERS.
- II. AS COLLECTORS.
- III. CHECKS.
- IV. CERTIFICATE OF DEPOSIT.
- V. CERTIFICATION OF CHECKS.
- VI. NATIONAL BANKS.
- VII. SAVINGS BANKS.

I. AUTHORITY OF OFFICERS.

1. **Of cashier.** A cashier has no authority to bind the bank by a discharge of its debtors, without payment, or to release a surety by an agreement that he should not be called upon to pay a note that he was liable on in ordinary cases; but if, knowing one to be a surety upon a note, he inform him that such note is paid, intending him to believe it, and the surety, relying upon that statement, changes his position toward his principal by indorsing a new note or giving up his securities, the bank will be estopped from denying that the note is paid. 1871. *Cocheco National Bank v. Haskell* (51 N. H. 116), XII, 67, and *note*, 75.

2. — In a suit against the cashier of a bank and his sureties, on their bond, *held*, the admission of the cashier, that he had paid out large sums of money without the consent of the directors, is admissible evidence. 1869. *Atlas Bank v. Brownell* (9 R. I. 168), XI, 281.

3. — Where the cashier of a bank, for the accommodation of the payee or prior indorser, indorsed his name upon a note, not belonging to the bank, as "A. B., Cas." *Held*, that the indorsement was official, not personal, and sufficient in form to bind the bank. 1870. *Houghton v. The First National Bank of Elkhorn* (26 Wis. 668), VII, 107.

4. — A bill drawn payable to the order of the "cashier" of a bank is payable to the bank, and no indorsement is necessary to give the bank title. 1871. *First National Bank v. Hall* (44 N. Y. 395), IV, 698.

5. Violation of charter by officers. A banking corporation was instituted under a statute which provided that no director or other officer of the bank should borrow any money from the bank, under penalty of fine and imprisonment. The president of the bank, who was also a director, borrowed a large sum of money from the bank, and afterward made an assignment of his property for the benefit of his creditors, and, on an appeal from an order allowing the claim of the bank under the loan, *held*, that the contract arising from the loan was enforceable, though prohibited by statute, and that the lien of the bank on property in the hands of the assignee was good to the extent of the loan. 1870. *Lester v. Howard Bank* (83 Md. 558), III, 211.

6. Payment to bank in its own bills. A bank cannot, by assignment of its effects, chuses in action, etc., deprive the maker of a note due the bank of his right to pay the same with the bills of the bank; nor can the bank, by any authority derived from the legislature, deprive the maker of such right of payment of a note due the bank, in bills of the bank. 1873. *Blount v. Windley* (68 N. C. 1), XII, 616:

II. AS COLLECTORS.

7. Negligence of notary. Where a bank, having received promissory notes for collection when due, employed a notary to present them and give notice to the proper parties, *held*, that it was liable for any negligence of the notary in omitting to demand payment of the maker or to give notice of protest to the indorsers. 1872. *Ayrault v. The Pacific Bank* (47 N. Y. 570), VII, 489 and *note*, 498.

8. Protest. Where a depositor of notes for collection told the officers of the bank that he wanted them protested if not paid, *held*, that in the term "protest," the depositor must be presumed to have included a demand of payment in proper form, and at the proper time, and, in case of non-payment, due and reasonable notice to the indorsers by the bank or some of its clerks or servants or other suitable person. *Id.*

9. When may recover moneys paid to principal by mistake. The defendant, located at New York, sent to plaintiff, located at Troy, for collection, a note payable at a bank about thirty miles from Troy. The note was not paid, and notice of non-payment, etc., was sent by mail to plaintiff and defendant. Defendant received the notice, and collected the amount of the note from an indorser. Plaintiff did not receive notice, and assuming the note to have been paid, forwarded its amount to defendant, who at once paid back the indorser. Subsequently, upon discovering that the note had not been paid, plaintiff claimed the amount paid to defendant. *Held*, that the plaintiff was entitled to

recover the money paid under a mistake of fact; that the payment back to the indorser was not sufficient to excuse defendant, it having had, at the time of plaintiff's making claim, means to secure itself against loss. 1871. *Union National Bank v. Sixth National Bank* (43 N. Y. 452), III, 718.

10. **Liab. for negligence.** Plaintiff, the indorsee of an instrument drawn on a bank and directing it to "ninety days after date, pay to B or order one thousand dollars," delivered it to defendant, a bank, for collection. At the expiration of the ninety days, defendant presented said instrument for payment, and protested it for non-payment without allowing days of grace. In an action against the bank for failing to have the instrument duly presented and protested, the drawers being insolvent, *held*, that the instrument was a bill of exchange and entitled to grace, and that the bank was liable for failing to have it duly presented and protested and notice given to the indorsers. 1872. *Georgia National Bank v. Henderson* (46 Ga. 487), XII, 590.

11. **Liab. for fraud of cashier.** Where the cashier of a bank in the ordinary business of receiving paper for collection commits a fraud on his bank in not entering the paper received on the books, and in retaining it without collection, protest or notice, the bank is responsible for any loss that may occur in consequence. *Pahquioque Bank v. Bethel Bank* (86 Conn. 825), IV, 80.

III. CHECKS.

12. **Right of holder.** Notwithstanding the agreement which bankers make with their customers to pay their checks to the amount standing to their credit, a check-holder can take no benefit from this agreement, and a check does not operate as a transfer or assignment of any part of the debt, or create a lien at law or in equity upon the deposit. 1871. *Ætna National Bank v. Fourth National Bank* (46 N. Y. 82), VII, 814.

13. — A direction by a bank depositor to apply deposits to the payment of checks or notes in a particular order, creates no trust in favor of holders; and a failure to comply with the direction is a breach for which the depositor alone can sue. *Id.*

14. — A promise by the drawee to the drawer of a check, draft or bill of exchange to accept and pay the same does not make the drawee liable to an action by a holder, unless the latter has taken the check, draft or bill of exchange on the faith of such promise. 1871. *Carr v. National Security Bank* (107 Mass. 45), IX, 6, and *note*, 9.

15. — H. consigned twelve bales of cotton to defendant, commission merchant, and drew a draft on him, which contained a memorandum at the foot thereof that it was drawn "against twelve bales of cotton," procured the plaintiffs to discount it, and notified the defendant of the consignment and the draft. The defendant refused to accept the draft, and informed H. by letter that he did so because he had not received the bill of lading of the cotton, but that he would accept the draft on receipt of the bill. Two days later he received the bill, and afterward plaintiff, who had seen his letter to H., presented the bill for acceptance, which was again refused. Upon a subsequent receipt of the cotton, the defendant sold it and credited its proceeds to H., who was his debtor to a

large amount. *Held*, that plaintiff could not maintain an action against the defendant, either upon his promise to accept the draft, or for the proceeds of the cotton. 1871. *Exchange Bank of St. Louis v. Rice* (107 Mass. 87), IX, 1.

16. — The holder of a check, drawn by a third party on a bank, cannot offset such check against his note held by the bank. There is no privity of contract between the holder of such a check and the bank, and a refusal to pay the check would not give the holder a right of action against the bank. 1871. *Case v. Henderson* (23 La. An. 49), VIII, 590.

17. — Where a bank receives from the payee a genuine check, drawn upon itself by a customer, as a deposit, and credits the depositor with it as such, it becomes at once the debtor of the depositor for the amount; and a subsequent return of the check to the depositor (even within an hour), as not good, because the drawer's account was overdrawn, will not relieve it from liability for the amount. 1871. *Oddie v. National City Bank of New York* (45 N. Y. 735), VI, 160.

18. **Presentment.** The holder of a negotiable bank check, drawn the day previous, presented it for payment, which was refused. On the same day he transferred it for a valuable consideration to plaintiff, who took it in good faith and without notice of the previous dishonor, and immediately on the same day presented it to the drawee, whereupon payment was again refused. *Held*, that plaintiff could recover of the drawer, a sufficient time after the check was drawn not having elapsed, when plaintiff took it, to raise the presumption of dishonor, although the drawer and drawee were residents of the same city. 1870. *Himmelmann v. Hotelling* (40 Cal. 111), VI, 600.

19. — When the drawer and drawee of a bank check reside in the same city or town, the reasonable time for presumptive dishonor should not be fixed within more restricted limits than the close of business hours of the day succeeding that on which payment might have been first legally demanded. *Ib.*

20. **Forged checks and drafts.** Where a bill or check is payable to order, a banker has authority to pay to any person who becomes holder by a genuine indorsement; but the banker cannot charge his customer with payments made otherwise, unless (1) the circumstances amounted to a direction from the customer to the banker to pay the paper without reference to the genuineness of the indorsement, or (2) were equivalent to a subsequent admission that the indorsement was genuine, in reliance on which the banker was induced to so alter his position as to preclude the customer from showing the indorsement to be forged. 1870. *Dodge v. National Exchange Bank* (30 Ohio St. 234), V, 648.

21. — Plaintiff being the owner of a certificate of indebtedness of the United States, indorsed it in blank and mailed it to a paymaster. It was stolen from the mail and presented to a paymaster by the thief, who represented himself to be plaintiff, and requested a check, saying that he could identify himself at the bank. The paymaster accordingly gave him a check, payable to plaintiff's order, on defendant bank. The bank paid the check to the bearer without inquiry, on the forged indorsement of the plaintiff's name. The paymaster, with notice of plaintiff's claim, subsequently lifted the check, and was charged with its amount in his settlement with the bank. *Held*, (1) that plaintiff's claim

against the defendant bank was not affected by the paymaster's negligence in not requiring the person to whom the check was given to identify himself; (2) that plaintiff's claim was not affected by the subsequent settlement of the paymaster with the bank; and (3) that plaintiff could ratify the giving of the check in his name, thus making it his own, and maintain an action against the bank for the amount. 1870. *Id.*

22. — The payee of a forged check, drawn payable to his order, took it from a third person, without inquiry, although in good faith and for value, and indorsed it for collection; and the drawee paid it. *Held*, that the drawee could recover the amount so paid from the payee. 1871. *National Bank of North America v. Bangs* (106 Mass. 441), VIII, 349.

23. — The responsibility of the drawee, who pays a forged check, for the genuineness of the drawer's signature, is absolute only in favor of one who has not, by his own fault or negligence, contributed to the success of the fraud or to mislead the drawee. *Ib.*

24. — A genuine draft was fraudulently altered by increasing the amount by changing the name of the payee, and by erasing and rewriting the name of the drawer. It was afterward presented to plaintiff, the drawee, by defendant, a *bona fide* indorsee, and paid. *Held*, that plaintiff, on discovering the forgery, could not maintain an action against defendant for repayment. 1871. *Nat. Park Bank v. Ninth National Bank* (46 N. Y. 77), VII, 310, and *note*, 313.

25. — Where the drawee of a bill to which the name of the drawer has been forged accepts or pays it in the hands of a *bona fide* holder, he is bound by the act, and can neither repudiate nor recover the payment. *Ib.*

26. — Plaintiff's book-keeper forged plaintiff's signature to a check on defendant's bank, which was paid. On hearing of the fact, plaintiff ratified the act and retained the book-keeper in his employ. He afterward again forged plaintiff's signature to a check which defendant paid and deducted from plaintiff's deposit. *Held*, that plaintiff had helped to mislead the bank and could not recover the amount. *DeFerret v. Bank of America* (23 La. An. 316), VIII, 597.

27. Days of grace are not allowed on a check payable at a future day named. *Champion v. Gordon* (70 Penn. St. 474) X, 681; but see *ante*, p. 10.

IV. CERTIFICATE OF DEPOSIT.

28. Certificate of deposit — mistake in — *bona fide* holder. On receiving a deposit of \$750, the defendants, bankers, issued a certificate of deposit, payable to the order of the depositor. By a mistake in filling up the body of the certificate, the sum was written "fifteen hundred," instead of seven hundred and fifty. The figures on the upper left-hand corner were for the correct amount. On the same day the payee transferred the certificate to an indorsee for value, and the indorsee transferred it to plaintiff to be credited, and a portion to be applied on an indebtedness, which was done. In an action to recover the full amount named in the certificate, *held*, that the plaintiff, being a *bona fide* holder, was entitled to recover the full amount. 1870. *Poorman v. Mills* (89 Cal. 345), II, 451.

V. CERTIFICATION OF CHECKS.

29. — In an action by a *bona fide* holder of a check drawn on defendant, a national bank, and certified by its cashier, *held*, that the defendant was liable, although the drawer had no funds in the bank when the check was certified. 1873. *Cook v. State National Bank* (52 N. Y. 96), XI, 667.

30. — The defendant drew his check to the order of D., which was discounted by the plaintiff. It was presented when due to the bank on which it was drawn for certification, and was certified as good. In the afternoon of the same day it was presented for payment, and payment refused, the drawee having in the intermediate time suspended. *Held*, that the certification operated as a payment of the check, as between the holder and the drawer, and the latter was discharged from liability. 1873. *First National Bank of Jersey City v. Leach* (52 N. Y. 350), XI, 708.

VI. NATIONAL BANK.

31. **By laws — stock.** A national bank has the power, under the National Currency Act of Congress of 1864, chapter 106, to make by-laws providing that the shares of its capital stock shall be transferable only on its books; that no stockholder shall be allowed to sell or transfer his stock while indebted to the bank, without the assent of its directors; and that the stock of any stockholder shall be held pledged and liable for the payment of any debt due or owing from such stockholder, and may be sold at public auction for the satisfaction of such debt, on default of payment thereof. 1869. *Lockwood v. Mechanics' National Bank* (9 R. I. 308), XI, 253.

32. — In all cases where an act is to be done by a corporate body or a part of a corporate body and the number is definite, a majority of the whole number is necessary to constitute a legal meeting, although at a legal meeting, where a quorum is present, a majority of those present may act. Hence, a by-law adopted at a meeting of six *ad interim* directors of a national bank, which had twelve directors before its conversion, is invalid, because not adopted by a majority or quorum of the board. *Ib.*

33. **Failure of — action against.** Where a national bank fails and the United States comptroller of the currency, proceeding under sections 46 to 50 of the currency act, finds it to be in default, declares the bonds deposited with the government to secure the circulation forfeited, and appoints a receiver, such proceedings do not dissolve the corporation to such an extent as to bar an action against it by a creditor to test the validity of a claim disallowed by the receiver. 1870. *Pahquioque Bank v. Bethel Bank* (36 Conn. 325), IV, 80.

34. **Re-organization of State banks.** When a bank, organized under the laws of a State, re-organizes as a national bank under the act of Congress, it escapes none of its liabilities by the change. 1870. *Coffey v. National Bank of the State of Missouri* (46 Mo. 140), II, 488.

35. **Liability for bonds deposited.** Where a national bank received on deposit United States bonds of one class, for the purpose of converting the same into bonds of another class, *held*, (1) that the bank was not a mere man-

datory or bailee, acting without compensation, but was liable to the depositor for the value of the bonds on its refusal to deliver them on demand; (2) that the business of receiving one class of United States bonds, to be converted into another, is within the scope of the powers conferred upon national banks by the act of Congress under which they are organized. 1870. *Leach v. Hale* (31 Iowa, 69), VII, 112.

36. **Liability of shareholder.** A person who appears upon the books of a national bank as the legal owner of shares of its stock is, upon the failure of such bank, liable for the debts of the association to the extent of the shares held by him, although he received and holds such shares as collateral security for a loan to a shareholder. 1871. *Hale v. Walker* (31 Iowa, 344), VII, 137.

37. **Interest — State usury laws.** The usury laws of the State of New York are applicable to national banks organized under the act of Congress of June 3, 1864. Accordingly, *held*, that in an action upon a promissory note, bought by a national bank, the defense of usury in taking more than seven per cent for the loan of the money for which the note was given, was available to the defendants. 1872. *First National Bank of Whitehall v. Lamb* (50 N. Y. 95), X, 438.

38. — National banks organized under act of Congress are not bound by the usury laws of the State in which they are situated. 1872. *First National Bank v. Garlinghouse* (22 Ohio St. 492), X, 751.

39. — The discounting of a promissory note by a national bank, at an unlawful rate of interest, does not render the note void *in toto*, but only to the extent of the interest. 1873. *Ib.*

40. — Under section 30, of the National Currency Act (18 Stat. at Large, 106) the taking or charging a rate of interest greater than six per cent per annum, in advance, by a national bank located in Ohio, is a forfeiture of the entire interest which the note or other evidence of the debt carries with it, or which has been agreed to be paid thereon; as well as the interest accruing after maturity and before judgment, as the interest which accrued before the maturity thereof. 1872. *Shunk v. First National Bank* (22 Ohio St. 508), X, 763 and note, 768.

41. — A national bank is limited, in its right to take or charge interest on its loans and discounts, to the rate of interest allowed by the State laws to banks of issue organized under those laws, if the rate so allowed is different from the general rate allowed by the laws of the State. *Ib.*, see *contra*, note, 768.

42. **Actions against.** A banking association organized under act of congress of 1864, chapter 106, can be sued in a State court, only in the city or county where it is located. 1869. *Crocker v. Marine National Bank* (101 Mass. 240). III, 336. See, also, *Bank of Bethel v. Pahquioque Bank*, 14 Wall. 383.

43. **Actions against — jurisdiction — removal of cause to Federal court.** Action brought by a citizen of New York, in a State court of New York, against a national bank located in Boston. *Held*, (1) that the court was not ousted of jurisdiction by section 57, of the National Currency Act (13 Stat. at

Large, 99), that statute being permissive and not mandatory as to the courts in which a national bank may be sued; and, *semble*, that congress had not the power to deprive State courts of jurisdiction in such cases; (2) that the defendant was a citizen of Massachusetts, within the meaning of the acts relating to the removal of causes to the Federal courts; (3) that the joinder in the action as defendants, of the drawers of the check, would not deprive the bank of the right to alone apply for a removal of the case to the Federal court, the causes of action being distinct and only properly joined by virtue of a State statute; (4) by a divided court, that the cause could not be removed by the bank into the Federal court, under the act of congress of March 2, 1867, as being a corporation, it could not make the affidavit required by the act. 1873. *Cook v. State National Bank* (53 N. Y. 96), XI, 667.

44. **Damages in action for gold deposit.** In an action of trover against a bank, after its re-organization as a national bank, for the value of certain special deposits in coin made prior thereto *held*, that the measure of damage was the value of the coin at the date of its conversion with interest thereon. 1870. *Coffey v. National Bank* (46 Mo. 140), II, 488.

45. **Taxation of.** The circulating notes of national banks are not exempt from taxation by a State. 1869. *Commissioners v. Elston* (82 Ind. 27), II, 827.

46. — The owner of shares of the stock in a national bank should be taxed therefor, in the city or town where he resides, and not in the city or town where the bank is located. 1870. *Clapp v. City of Burlington* (43 Vt. 579), I 355.

47. — By an act of the Indiana legislature, passed in March, 1867, shares of the capital stock of national banks within the State were taxed for that year, and the cashier of each bank was required to represent each stockholder in listing and valuing his stock. *Held*, that the statute took effect from the first day of January, 1867, and that it was a valid exercise of the taxing power, and that it did not conflict with the constitutional requirement of "a uniform and equal rate of assessment and taxation." 1870. *Whitney v. Ragsdale* (88 Ind. 107), V, 185.

Taxation of shares in national banks. See CONSTITUTIONAL LAW.

VII. SAVINGS BANKS.

48. **Deposits.** A father deposited, in a savings bank, a sum of money in his own name and a like sum in his daughter's name, though for his own benefit, and retained the pass-books in his own possession. The father died, and the daughter brought suit against the bank to obtain the amount deposited by him in her name. *Held*, (1) that parol evidence was admissible to show that the father deposited the money (which was his alone) in the manner he did because the law would not permit the bank to hold so large a sum as both deposits for a single depositor; (2) that the daughter could not recover, notwithstanding the by-laws of the bank provided that a depositor and his legal representatives should be bound by a condition annexed to a deposit, designating the name of the person for whose benefit it was made. 1870. *Brabrook v. Boston Five Cents Savings Bank* (104 Mass. 228), VI, 222.

49. **Agent of depositors.** A savings bank met with a loss which was by vote of the directors, apportioned *pro rata* among the depositors. In an action by a depositor to recover the full amount of his deposit, *held*, that the bank was merely the agent of depositors, and that plaintiff could not recover. 1871. *Bunnell v. The Collinsville Savings Society* (88 Conn. 203), IX, 380.

50. **The gift of a savings bank book**, with an intention to give the deposits, is a valid gift. *Camp's Appeal* (86 Conn. 88), IV, 39; *Tillinghast v. Wheaton* (8 R. I. 536), V, 621.

See **BILLS AND NOTES; FORGERY; GIFT.**

BAR TO ACTION — *See* **BANKRUPTCY; JUDGMENT.**

BARGAIN AND SALE.

I. **OF LANDS** — *See* **CONVEYANCE.**

II. **OF GOODS** — *See* **SALE.**

BARRATRY — *See* **INSURANCE.**

BEQUEST — *See* **WILLS.**

BETTING AND GAMING.

1. **On election — recovery of stake.** Plaintiff and defendant made a wager as to the result of a presidential election in another State, and deposited the money with a stakeholder. The plaintiff lost, and the stakeholder paid the money to the defendant. In an action to recover the money back, *held*, (1) that the wager was against public policy and void; (2) that the plaintiff could not recover back the money. 1871. *Gregory v. King* (58 Ill. 169), XI, 56, and *note*, 58.

2. **Wager on horse-race.** A wager upon the result of a horse-race is illegal, and money bet thereon can be recovered of the stakeholder by the loser, if before paying it over to the winner the stakeholder has been notified not to pay it over, and the loser has demanded its return. 1871. *Wilkinson v. Tousley*, (16 Minn. 299), X, 139.

3. **Contracts for gambling consideration void.** A statute provided that all promises, notes, bills, contracts, etc., made upon any gambling consideration should be void, that a court of equity might set aside any such promise, etc., and that no assignment of any bill, note, agreement or other security, as aforesaid, should in any manner affect the remedies of any person interested therein. The plaintiff indorsed certain drafts payable to his order, staked them at faro and lost. The drafts were subsequently transferred in the usual course of business, and without notice, and for a valuable consideration, to the defendant. In a suit to cancel the indorsements, and to have the drafts delivered to the plaintiff, *held*, that the indorsements were void; that the defendant acquired no title to the drafts, and that the plaintiff was entitled to the remedy sought. 1870. *Chapin v. Dake* (57 Ill. 295), XI, 15.

4. **When gambling transaction not void.** In an action on a certificate of deposit by a second indorsee and *bona fide* holder, *held*, that the fact that the transfer

40 BILL OF LADING—BILLS AND NOTES.

to the first indorsee was made in a gambling room and in a gambling transaction, did not render the transfer void under an act against gaming, there being no evidence that the consideration therefor was money or other thing of value lost or won at the games prohibited. 1870. *Poorman v. Mills* (89 Cal. 345), II, 451.

BELLIGERENT RIGHTS—*See* WAR.

BIGAMY—*See* MARRIAGE.

BILL OF LADING.

Possession of goods acquired under a bill of lading is sufficient to maintain an action against one who does not show a better title. 1868. *Adams v. O'Conner* (100 Mass. 515), I, 137.

BILLS AND NOTES.

I. PARTIES.

1. *Accommodation Indorser.*
2. *Agents.*
3. *Corporation.*
4. *Drunkard.*
5. *Fictitious Maker.*
6. *Guarantor.*
7. *Husband and Wife.*
8. *Joint Owners.*
9. *Sureties.*

II. FORM AND OPERATION.

III. CONSIDERATION.

IV. TRANSFER.

V. DEMAND.

VI. NOTICE OF PROTEST.

VII. RIGHTS OF HOLDERS IN GOOD FAITH.

VIII. ALTERATIONS.

IX. ACTIONS ON.

X. DEFENSES.

XI. PAYMENT.

XII. INTEREST.

XIII. LAW OF PLACE.

XIV. LOST AND STOLEN PAPER.

XV. NON NEGOTIABLE PAPER.

XVI. FORGED PAPER.

XVII. STAMPS—*See* STAMPS.

I. PARTIES.

1. *Accommodation indorser.*

1. **Indorsement of a third person.** The mere signature of a third person on the back of a negotiable note, before its indorsement by the payee, creates *per*

as, no implied or commercial contract whatever. The liability of such third person will be that of a second indorser, or of surety for the maker, according to the intention with which he became a party to the note, and parol evidence is competent for the purpose of showing what such intention was. 1872. *Chaddock v. Vanness* (83 N. J. 517), X, 256.

2. One not named as payee, who puts his name on the back of a note, before delivery to the payee, will be held liable on it as an original promisor, if it be proved that he wrote his name on the note as surety for the maker, upon the faith of which money was loaned, or credit given by the payee to the maker. His liability is that of a joint and several maker of the note. Forbearance of a precedent debt of the principal is a sufficient consideration for such undertaking. And though the payee afterward indorses his name on the note, and uses it for his own purposes for discount at a bank, he may, if compelled to take up the note, erase his own indorsement, and recover of the other parties as makers, upon proof of the original contract under which the note was given. *Id.*

3. — If a person not a party to a note places his name in blank on the back thereof before delivery, he is to be regarded as an indorser, and demand and notice are necessary in order to fix his liability. 1870. *Jones v. Goodwin* (39 Cal. 498), II, 478, and *note*, 475.

4. — A promissory note signed by B., and indorsed in blank by C., was delivered to D., to secure a loan. *Held*, that, by conclusion of law, C. was responsible as joint maker. 1871. *Loes v. Bosley* (35 Md. 262), VI, 411.

5. — Defendant put his name on the back of a negotiable promissory note, the payee not having indorsed it, and subsequently wrote letters to the payee stating that if the maker did not pay the note he (defendant) would pay it. In an action by the payee, *held*, that although, in the absence of legal evidence, the position of defendant was that of second indorser, yet the letters were admissible in evidence to prove that the agreement upon which the indorsement was made was a guaranty that the note should be paid to the payee. 1871. *Elbert v. Finkbeiner* (68 Penn. St. 243), VIII, 176.

6. — A bill of exchange was indorsed by one person for the accommodation of another, to enable the latter to raise money, the indorser having no interest in the application of the money. The bill was used by the party for whom it was indorsed, in payment of a pre-existing debt. *Held*, that such application of the bill constituted no defense to an action brought upon the bill against the accommodation indorser by the party receiving it in payment, with full knowledge of these facts. 1870. *Pettors v. The Muncie National Bank* (34 Ind. 251), VII, 225, and *note*, 228.

7. — A note payable to the order of J. E. B. was, before delivery to the payee, indorsed by S. B. Prior to maturity, the payee transferred the note to H., who, before it fell due, transferred it to the plaintiff absolutely, without any condition, for a valuable consideration. At the time of such transfer the note had upon it an indorsement of J. E. B., written above the indorsement of S. B., by which said J. E. B. made the same payable to the order of S. B. "without recourse" to said J. E. B. as indorser. *Held*, that in the absence of proof that

S. B. indorsed with intent to become surety for the maker, to the payee, the legal presumption was that he stood in the position of subsequent indorser, and that the payee could neither maintain an action against S. B.'s executor, upon the indorsement, nor transfer a right of action thereon to a purchaser, with notice, except upon assuming the responsibility of first indorser. 1873. *Phelps v. Vischer* (50 N. Y. 69), X, 433.

8. Action by pledgee. A pledgee of negotiable paper has generally a right to collect the whole amount of securities pledged to him, and account to the pledgor for the surplus over his debt. But in case of accommodation paper pledged, the pledgee can recover of the maker only the amount of the debt due him from the pledgor. 1868. *Atlas Bank v. Doyle* (9 R. I. 76), XI, 219.

2. Agents.

9. — Office of company The secretary of an incorporated company gave a promissory note, using the words "We promise to pay," etc., and signed it with his own name with "Sec'y" affixed, and impressed thereon the seal of the corporation. *Held*, that he was not personally liable thereon. 1869. *Means v. Swormstedt* (33 Ind. 87), II, 330, and *note*, 332.

10. — A bank check, with the words "Ætna Mills" printed on the margin, was given in payment of a debt due from the mills, and signed by F., the treasurer. *Held*, that it was the check of the mills, and not the personal check of F. 1871. *Carpenter v. Furnsworth* (106 Mass. 561), VIII, 360.

11. — A promissory note was made payable "to the order of C. W. S., treasurer of the I. M. B. Co." *Held*, that the legal intentment was that the contract was made with the company and not with the treasurer individually, and that the maker of the note, in an action thereon, was estopped from alleging the non-existence of the corporation at the time he made his contract. 1871, *Vater v. Lewis* (36 Ind. 288), X, 29.

12. Parol evidence to show intent. A promissory note read as follows: "Four months after date, we, the president and directors of the Dulaney's Valley and Sweet Air Turnpike Company, of Baltimore county, promise to pay to William F. Pierce, or order, one thousand dollars with interest, for value received;" and was signed by C. T. H., "president," J. N. H. and J. G. D., "directors," and E. R. S., "secretary." In an action to recover on the note, *held*, that parol evidence was admissible to show that the drawers of the note signed it as agents of the company and not as individuals, and that the note was accepted as the note of the company. 1869. *Haile v. Peirce* (32 Md. 327), III, 139.

13. — A promissory note in the form: "I promise to pay to the order of S. & Co.," etc., * * * and signed "John T. Hull, Treas. St. Paul's Parish," is the note of Hull, and parol evidence is inadmissible to show that it was the understanding of the parties when the note was given that it was the note of the parish and not of Hull. 1871. *Sturdivant v. Hull* (59 Me. 173), VIII, 409.

14. Cashier of bank. An accommodation indorsement by the cashier of a bank in form: "A. B., Cas.," *held*, official and sufficient to bind the bank. *Houghton v. First National Bank* (36 Wis. 663), VII, 107.

15. — Where a bill is drawn payable to the order of the "cashier" of a bank, the bank is, in judgment of law, the payee, and no indorsement is necessary to give the bank title. 1871. *First National Bank of Angelica v. Hall* (44 N. Y. 895), IV, 698.

3. Corporation.

16. The note of a manufacturing corporation, in the hands of a holder in good faith, for value, who took it before maturity, and without knowledge that the maker had not received full consideration, can be enforced against the corporation, although it was made as an accommodation note. 1869. *Monument National Bank v. Globe Works* (101 Mass. 57), III, 823.

4. Drunkards.

17. When drunkenness a defense. The drunkenness of the maker of a promissory note is not a defense to an action by a holder in good faith, in the absence of proof of fraud, or of his total incapacity. 1872. *Miller v. Finley* (26 Mich. 249), XII, 806.

18. — The drunkenness of the maker of a negotiable promissory note cannot be set up as a defense against an innocent holder for value. The indorsee will be deemed an *innocent* holder unless he took the note *mala fide*, and with notice of the condition of the maker. 1871. *State Bank v. McCoy* (69 Penn. St. 204), VIII, 246, and *note*, 251.

5. Fictitious Maker.

19. A person who signs a fictitious name to a promissory note, or the name of a real person without authority, is not liable on the note. *It seems* he would be liable in tort. 1870. *Bartlett v. Tucker* (104 Mass. 836), VI, 240.

6. Guarantor.

20. Guaranty of payment. The owner and holder of a promissory note transferred it to the plaintiff, and, at the same time, indorsed thereon the following: "I guarantee the payment of the within note to C. Edgerton or order.— Isaac Clay." In an action on the guaranty, *held*, first, that no consideration for the guaranty need be alleged; second, that, as the guaranty was absolute, no averment of demand and notice was necessary. 1869. *Clay v. Edgerton* (19 Ohio St. 549), II, 423.

7. Husband and Wife.

21. — By the statutes of Maine, a promissory note given by the husband to the wife for money borrowed of her, is valid; and a divorce, *a vinculo*, removes any disability to the subsequent maintenance of an action upon the note by her against him. 1870. *Webster v. Webster* (58 Me. 139), IV, 253.

22. — A married woman is liable on her promissory note given in payment of her husband's debts, although it is not made a charge upon her separate estate. 1871. *Deering v. Boyle* (8 Kan. 525), XII, 480. See MARRIAGE.

8. Joint-owners.

23. — The surrender of a promissory note by A, one of the joint-owners, to the makers, to be canceled or destroyed, if done without the authority of B,

the other joint-owner, is a conversion of the note for which trover will lie by B against A. 1871. *Winner v. Penniman* (35 Md. 163), VI, 385.

9. Surety.

24. Consideration. A. executed and delivered to plaintiff his promissory note, in which no time of payment was specified, at the same time agreeing to procure M. to sign the note as surety, if at any time the plaintiff should desire it. The plaintiff accepted the note upon this agreement. A few months after, the plaintiff desired the additional security, and A. procured M. to sign the note, and returned it to plaintiff. No new consideration then passed between any of the parties. *Held* (LOTT and SUTHERLAND, JJ., *dissentiente*), that M. was liable as surety on the note. 1870. *McNaught v. McLaughry* (42 N. Y. 22), I, 487.

25. Not discharged by usury. The discounting of a note for the principal maker, at an unlawful rate of interest, is not such an unauthorized use of the note as will discharge the sureties from liability. In the absence of any express agreement or understanding on that subject between the sureties and the principal, of which the holder had notice, or any intention to practice a fraud on the sureties, they must be held to have trusted to the judgment and discretion of the principal, as to the terms on which the note might be discounted. 1872. *First National Bank v. Garlinghouse* (22 Ohio St. 492), X, 751.

26. — A surety on a promissory note is not discharged by a usurious agreement between the maker and the payee for an extension of time. 1872. *Meiswinkle v. Jung* (30 Wis. 361), XI, 572.

27. Surety's estate discharged on his death. Upon the death of one of the makers of a joint-note who signed as surety only, his estate is absolutely discharged from liability on the note. 1872. *Getty v. Binns* (49 N.Y. 385), X, 379.

28. Surety and joint promisor. The defendants made a note in this form: "We, A and B, as principal, and C and D, as surety, promise to pay to the order of ourselves," etc., signed on the face by A and B, and indorsed by all the parties. *Held*, that D's liability was that of surety and joint promisor in a note payable to the order of the principals and by them indorsed. 1871. *National Pemberton Bank v. Lougee* (106 Mass. 371), XI, 367.

II. FORM AND OPERATION.

29. Joint and several. A promissory note in the form, "I promise," etc., and signed by several parties as makers, is joint as well as several. 1871. *Wallace v. Jewell* (21 Ohio St. 163), VIII, 48.

30. Negotiability. A stipulation in a promissory note to pay attorney's fees, should action be brought upon it, does not render it non-negotiable. 1871. *Stoneman v. Pyle* (35 Ind. 103), IX, 637.

31. — A promissory note, payable to order, "with interest, waiving the right of appeal and all valuations, appraisement, stay and exemption laws," is negotiable. 1871. *Zimmerman v. Anderson* (67 Penn. St. 421), V, 447.

32. — A promissory note given to an insurance company, and otherwise negotiable, bore on its face the words: "On policy No. 83,386." *Held*, nego-

liable; and this, although the policy contained a provision for the set-off of notes due in case of loss. 1871. *Taylor v. Curry* (109 Mass. 36), XII, 661.

33. — A certificate of deposit contained the words "payable to order in *currency*." *Held*, that it was not negotiable, there being no evidence as to the meaning of the word "*currency*." 1870. *Huss v. Hamblin* (29 Iowa, 501), IV, 241.

34. **Stock certificate.** A certificate of stock transferred in blank is not a negotiable instrument. 1868. *Shaw v. Spencer*, (100 Mass. 382), I, 115.

35. **Demand notes.** The rule that a promissory note, payable on demand, with interest, is a continuing security, does not apply between holder and maker. Therefore, a note, payable on demand, with interest, transferred nearly three months after date, is past due when transferred, and subject to all the defenses that would have been available if the suit had been by the original payee. 1870. *Herrick v. Woolverton* (41 N. Y. 581), I, 461.

36. — The statute of limitations begins to run from the date of a promissory note payable on demand, with interest. 1872. *Wheeler v. Warner* (47 N. Y. 519), VII, 478.

III. CONSIDERATION.

37. **Illegal in part.** A promissory note, the consideration of which is illegal in part, is wholly void. So *held*, where a part of the consideration was the purchase-money of intoxicating liquors, sold in violation of statute. 1878. *Widoe v. Webb* (20 Ohio St. 431), V, 664.

38. **Contrary to public policy.** In an action on a promissory note, the consideration for which was an agreement by the payee to procure for the maker a substitute in case he should be "drafted so as to do duty in the army," or otherwise to clear him from the draft, and the maker was never in fact drafted: *held*, that the agreement was contrary to public policy, and the note therefore void. 1871. *O'Hara v. Carpenter* (23 Mich. 410), IX, 89.

39. **Confederate money.** The agreement was to pay a note in confederate money, though it was not so expressed in the instrument. *Held*, that the note was void. 1869. *Donley v. Tindall* (32 Tex. 43), V, 234.

40. — The loan of confederate treasury notes is not a valid consideration for a promissory note made between parties resident of Alabama during the civil war, and without any legal intent. 1870. *Hale v. Huston* (44 Ala. 184), IV, 124.

41. — A promissory note, made during the rebellion between citizens of Alabama, in consideration of a loan of confederate treasury notes, is illegal and void; and a note in renewal thereof is likewise invalid. 1870. *Lawson v. Miller* (44 Ala. 616), IV, 147.

42. **Slaves.** A promissory note, made between citizens of Alabama, for the purchase-money of slaves sold after the date of the emancipation proclamation of the president of the United States, is valid, notwithstanding State ordinances to the contrary. 1870. *McElvain v. Mudd* (44 Ala. 48), IV, 106.

43. **Knowledge on part of payee.** B. bought a horse of A. for the confederate cavalry service, and gave a promissory note for the purchase-money.

Held, that bare knowledge on the part of A. that B. intended to make an illegal use of the horse did not vitiate the note. 1869. *Tedder v. Odum* (3 Heisk. Tenn. 68), V, 25.

44. Patent right. Where the consideration of a promissory note is a license to use and vend an invention regularly patented, the unprofitableness of the invention does not vitiate the note. 1869. *Nash v. Lull* (102 Mass. 60), III, 485.

45. — In an action on a promissory note given for an interest in a patent right, evidence of the worthlessness of the patent is inadmissible under the general issue. 1869. *Miller v. Finley* (26 Mich. 249), XII, 806.

IV. TRANSFER.

46. Indorsement after transfer. Where a promissory note, payable to the order of a person, is transferred by him before maturity, but not indorsed until after maturity, such indorsement does not relate back to the time of the transfer, but the transferee holds the note subject to all the equities between the original parties. 1868. *Lancaster National Bank v. Taylor* (100 Mass. 18), I, 71.

47. — Where the payee of a promissory note transfers it to a *bona fide* purchaser before maturity, but does not indorse it until after maturity or until after the purchaser has notice of a defense, such indorsement does not relate back, but the purchaser holds the note subject to all the equities between the original parties. 1871. *Clark v. Whitaker* (50 N. H. 474), IX, 286.

48. Void indorsement. An indorsement void for usury, is valid to pass the title of a note to the indorsee, and enable him to collect the note of the maker. 1872. *Armstrong v. Gibson* (31 Wis. 61), XI, 599.

49. Indorsers. A second indorser of a promissory note, who, by mistake or inadvertence, writes his name above the first indorser, and is called upon to pay a portion of the note, may recover the amount so paid from the first indorser. 1871. *Slack v. Kirk* (67 Penn. St. 380), V, 438.

V. DEMAND.

50. Presentment for acceptance. W. drew a bill of exchange on G., made payable to his own order on a day certain at the Ocean Bank, New York. At maturity the bill was presented at the bank for payment, and duly protested for non-payment. G. was in funds at the time, and would have paid the bill had he known of its existence, but he afterward became insolvent. In an action by the indorser against the drawer, *held*, that the holder of the bill was not bound to present it to the drawee for acceptance; that it was the duty of the drawer to have notified the drawee of the bill, and that presentment at the bank was sufficient to charge the antecedent parties. 1869. *Walker v. Stetson* (19 Ohio St. 400), II, 405.

51. — Defendants drew a bill of exchange against a cargo and indorsed and delivered to plaintiffs the bill and also the bill of lading of the cargo, as collateral security for the acceptance and payment of the bill, authorizing them, in case they thought it necessary, to sell the cargo and apply the proceeds to the payment of the bill. The drawee refused to accept the bill without a

delivery of the bill of lading. *Held*, that presentment and notice of non-acceptance were excused. 1872. *Schuchardt v. Hall* (36 Md. 590), XI, 514.

52. Laches in presentment. The defendants, a firm in Buffalo, who were indebted to the plaintiff's firm in New York, forwarded by mail a draft on J. K. P. & Co., a business house in New York. The plaintiff, about half-past one on the day of its receipt, presented the draft to J. K. P. & Co., and received that firm's check for the amount. J. K. P. had funds in the bank on which the check was issued, and the check would have been paid if it had been presented that day. The check was deposited by plaintiff in their own bank, and it did not reach the other bank until twelve o'clock the next day, and after J. K. P. & Co. had failed. *Held*, that the plaintiffs were guilty of laches in failing to present the check on the day it was received, and the defendants were released from liability for their indebtedness. 1870. *Smith v. Miller* (48 N. Y. 171), III, 690.

53. When payable at bank. A promissory note payable at a bank was presented for payment by the holder at eleven o'clock on the day it was due, but it was not then paid. The maker, between eleven and twelve o'clock of the same day, put funds in the bank, and gave instructions to have the note paid on presentation. After that it was not presented again, although it was the custom to allow until three o'clock for payment of such notes. The maker subsequently withdrew the funds from the bank. In an action by the holder against the maker, *held*, that the latter was liable, and the money not having been brought into court, the holder was entitled to judgment with costs. 1872. *Hills v. Place* (48 N. Y. 520), VIII, 568.

54. Residence of maker. The presumption, in the absence of proof to the contrary, is that the maker of a promissory note resided at the place where the note was made at the time he made the note, and that where a note is made by a resident of the State, who before its maturity, removes from the State and takes up a permanent residence elsewhere, it is sufficient to present the note for payment at the maker's last place of residence in the State. *Herrick v. Baldwin* (17 Minn. 209), X, 161.

55. Waiver. The defendant, who had indorsed a note, was, previous to its maturity, shown the note and told that the maker wanted it to remain another year. He was asked if he was willing, and he said he was willing to let it remain, and that it was a good note. *Held*, that this was a waiver of demand and notice; that the liability of the indorser became absolute on the maturity of the note, and no subsequent demand or notice was required. 1870. *Sheldon v. Horton* (48 N. Y. 98), III, 669.

VI. NOTICE OF PROTEST.

56. Protest, contents of. A protest of a notary is *prima facie* evidence of the truth of its statements, and when exclusively relied on to prove the necessary facts, must contain sufficient averments that every thing requisite has been done to authorize the demand upon the indorser. 1869. *People's Bank v. Brooks* (81 Md. 7), I, 11.

57. — When the protest merely states that the note was presented for payment, but does not say *where*, the statement is insufficient to charge the indorser. *Id.*

58. Evidence. The notary's certificate of protest being admitted in evidence without objection, except as to proof of its execution. *Held*, competent to prove by statements therein, that the maker of the note protested, had left the State and had no residence or place of business therein. *Herriek v. Baldwin* (17 Minn. 209), X, 161.

59. Notice by mail. On the 10th of July, 1866, a bank received notice of the dishonor of a promissory note which it had discounted, and on the 11th, after the close of the business day, notified its immediate indorser by a drop letter, which he did not receive until the 12th, there being no system of carriers. *Held*, insufficient notice to charge the indorser. 1869. *Shelburne Falls National Bank v. Townsley* (103 Mass. 177), III, 445.

60. Where indorser dies. Where, a short time previous to the maturity of a note, an indorser dies, a proper notice of protest of the note sent to such indorser's address, the holder and notary being ignorant of his death, and actually reaching the administrator and one of the heirs, will be sufficient to bind the estate. 1870. *Maspero v. Pedesclaux* (32 La. An. 227), II, 737.

VII. RIGHTS OF HOLDER IN GOOD FAITH.

61. Holder in good faith. In an action on a negotiable promissory note, the defense was fraud in its inception, and the judge charged the jury that plaintiff could not recover if he had "notice of such facts and circumstances as would have put a reasonable man upon inquiry," in regard to the faith of the note. *Held*, erroneous, on the ground that the rule of law requires proof, direct or by circumstances, that a holder for value, who took the note before maturity in the ordinary course of business, had *actual* notice of the fraud, in order to defeat his recovery. 1870. *Lake v. Reed* (29 Iowa, 258), IV, 309.

62. — Plaintiff knowing the maker, but not the payee of a negotiable promissory note of \$300, bought it before due, at a discount of \$50, from a stranger, who refused to guarantee its payment. *Held*, that the circumstances were sufficient to put plaintiff on inquiry as to the consideration of the note. 1870. *Gould v. Stevens* (48 Vt. 125), V, 265. See *contra*, note, 266.

63. — The purchaser before due, and without notice, of a negotiable promissory note, fraudulent as between the original parties, gets good title thereto although he took it under circumstances which ought to excite the suspicion of a prudent man. 1871. *Phelan v. Moss* (67 Penn. 59), V, 402.

64. — Gross negligence is not enough to vitiate the title of a holder for value of a negotiable promissory note; *mala fides* must be shown. *Ib.*

65. A party will be protected as holder of negotiable paper, although fraudulently transferred, when he has received it before maturity, without notice of the fraud and in good faith, and parted with something of value for it at the time of its transfer. 1870. *The Park Bank v. Watson* (42 N. Y. 490), I, 573.

66. The defendant was the maker of accommodation notes for the benefit of W., and to be used by W. for a specific purpose. Instead of using them for that purpose, W. lodged the notes with the plaintiff as collateral security for

a previous debt not yet due, and in lieu of other collateral notes then past due and protested. *Held*, that the plaintiff was a *bona fide* holder for value and entitled to recover. *Ib*.

67. A note void in the hands of the payee, because obtained by him of the maker by fraud, is collectible in the hands of a subsequent *bona fide* holder who had taken it before maturity for value; but if such holder has paid on such transfer a less sum than the amount of the note, he can only recover the amount which he, or some prior holder through whom he derives title, has paid for it. 1870. *Holcomb v. Wyckoff* (85 N. J. 85), X, 219.

68. *Diversion*. A. signed a promissory note as surety for B., with the understanding that B. was to use it in raising funds for prosecuting a profitable business. But B. gave the note to C., the payee, in payment of a pre-existing debt. *Held*, that A. was liable on the note to C., who was innocent of the fraud. 1871. *Quinn v. Hard* (48 Vt. 875), V, 384.

69. *Violation of agreement in filling up*. A. indorsed a blank form of a promissory note and delivered it to the maker, stipulating that it should not be made payable at a bank. In filling up the note the maker made it payable at a bank, and in that condition negotiated it. *Held*, that A. was liable on the note in the possession of a *bona fide* holder. 1869. *Spiller v. James* (83 Ind. 202), II, 384.

70. *Purchase after decease of maker*. A *bona fide* purchaser for value, and before maturity, of a promissory note, with knowledge of the previous decease of the maker, but without notice that it was an accommodation note, may recover upon it against the representatives of the deceased maker, although the indorser, for whose accommodation it was made, fraudulently put it into circulation as against the maker. 1870. *Clark v. Thayer* (105 Mass. 216), VII, 511.

VIII. ALTERATION.

71. Any alteration of an instrument by the party claiming an interest under it avoids such instrument. *Hunt v. Gray* (35 N. J. 237), X, 232.

72. If an agent, intrusted with a note for the purpose of having it discounted in bank, alter it, such alteration will not avoid such note, such act not being imputable to the principal. *Ib*.

73. *By mistake*. If an instrument be altered by the party holding it, by mistake, or without any fraudulent intent, such alteration will not impair the right of suit founded on the consideration for which such instrument was given. *Ib*.

74. *Apparent alteration*. Where an alteration is apparent on a note or other written instrument, the question whether such alteration was made before or after execution must be submitted to the jury. *Ib*.

75. *Altering date*. The maker of a promissory note altered its date, without the knowledge or consent of the surety thereto, after execution, but before delivery. *Held*, that the surety was discharged by the alteration. 1870. *Britton v. Dierker* (46 Mo. 591), II, 553.

76. *Adding name of maker*. Adding the name of a person as maker of a

joint and several promissory note after delivery, without the knowledge or consent of the original signers, is a material alteration, and vitiates the note as to such original signers. 1871.) *Wallace v. Jewell* (21 Ohio St. 168), VIII, 48.

77. **Name of surety.** The maker of a promissory note *held* not discharged by the addition of the name of another as surety. 1872. *Miller v. Finley* (26 Mich. 249), XII, 806.

78. **Changing name of payee.** Defendant, for the maker's accommodation, indorsed a promissory note payable to the maker's order, and before the maker indorsed it. The maker, in negotiating the note to the plaintiff, altered its face so as to make it payable to the plaintiff's order, without the defendant's knowledge or consent. In an action to charge the defendant as an original promisor, *held*, that the alteration was material and avoided the defendant's liability. 1871. *Stoddard v. Penniman* (106 Mass. 366), XI, 863.

79. **Filling blanks.** The payee of a promissory note drawn upon a printed form, added, after its delivery, and without the knowledge or consent of the maker, the words "10 per cent" in the blank after "interest at." *Held*, that the note was void as to the maker, in the hands of a *bona fide* holder, before maturity. 1871. *Holmes v. Trumper* (22 Mich. 427), VII, 661, and *note*, 669.

80. — The alteration of a promissory note after delivery by filling a blank left therein, so as to make the note draw interest at ten per cent, will not invalidate it in the hands of a *bona fide* indorsee for value before maturity. 1872. *Rainbolt v. Eddy* (84 Iowa, 440), XI, 152, and *note*, 153.

81. — The maker of a promissory note, in the usual form, is negligent in leaving a blank between the words indicating the amount for which the note is drawn and the word "dollars;" and, although the blank is fraudulently filled up after delivery, so as to increase the amount, the alteration being imperceptible, the maker is liable to an innocent holder for the face of the note. 1871. *Garrard v. Hadden* (67 Penn. St. 82), V, 412.

82. **As to interest.** A promissory note was signed by A., indorsed by C., and delivered to B., who took it away with him and soon returned it to A., stating that it should have been drawn "with interest," whereupon these words were added by A.'s assent and in C.'s absence. In an action against C. on the indorsement the note was introduced in evidence in its original form, the words "with interest" having been erased. *Held*, that C. was liable, as the alteration not fraudulent, and the note had been restored to its original form. (SHEARWOOD, J., *dissentiente*.) 1870. *Kounts v. Kennedy* (63 Penn. St. 187), III, 541.

83. — A promissory note bearing interest, was signed by the principal maker and by the sureties, and delivered to the payee. Two months afterward the payee, without fraudulent intent, the sureties not being present, but by consent of the principal maker, added the words, "Int. payable semi-annually." In an action on the note by the payee, *held*, that the alteration avoided it as to the sureties, and that, after going to trial, the payee could not be permitted to strike out the added words, and recover on the note in its original form. 1871. *Fulmer v. Seitz* (68 Penn. St. 237), VIII, 172.

84. — A sealed promissory note, with several sureties, was executed and

offered by the maker to the payee, who refused to accept it unless the words "interest to be paid semi-annually" were inserted. The maker thereupon, without the knowledge of the sureties, wrote the words in the note as required. *Held*, that the sureties were discharged from liability. 1870. *Neff v. Horner* (63 Penn. St. 337), III, 555.

85. **Detaching condition.** The detachment of a written condition, made at the same time and upon the same paper, from a promissory note, if altering its character, and done fraudulently, is forgery. 1869. *State v. Stratton* (27 Iowa, 420), I, 282.

86. — The destruction of a memorandum, written under a promissory note, and qualifying it, vitiates the note even in the hands of a *bona fide* holder, having no knowledge of the alteration. 1870. *Wait v. Pomeroy* (20 Mich. 425), IV, 395.

87. — The severance from a promissory note of a memorandum, made at the same time and upon the same paper as the note, and modifying its obligation, if done without the consent of the maker, is a material alteration, and vitiates the note even in the hands of an innocent holder. 1872. *Benedict v. Cowden* (49 N. Y. 396), X, 382, and *note*, 389.

88. **Immaterial alteration.** Defendant indorsed a promissory note for the accommodation of the maker, who afterward, and without the knowledge of defendant, changed the note, by adding to the body of it the following words; "Payable before maturity, and interest on unexpired term refunded if I so elect," and negotiated it to plaintiff who was a *bona fide* holder thereof, for value, and without notice of the alteration. *Held*, that the alteration was immaterial as to defendant, and his liability not affected thereby. 1871. *Herrick v. Baldwin* (17 Minn. 209), X, 161.

89. **Making payable in gold.** In an action by the administrators of the payee of a promissory note made in 1859 and payable "in gold" against the sureties thereto, the latter interposed the defense that the words "in gold" were inserted by the payee without their knowledge or consent after delivery. *Held*, that the alteration did not change the legal liability of the sureties, and that they were therefore liable. 1868. *Bridges v. Winters* (42 Miss. 185), II, 598.

90. **Correcting mistake.** Where a promissory note appeared on its face to have been originally dated February, 1868, and to have been afterward changed to 1869, by making the figure 9, over the figure 8, *held*, that if the alteration was made by the holder, after the execution and delivery of the note, in order to correct a mistake and make the note conform to the intention of the parties, such alteration did not invalidate the note, even if the signer had no knowledge of such subsequent alteration. 1870. *Duker v. Frans* (7 Bush, Ky., 278), III, 814.

91. — Defendant was surety on a promissory note payable to plaintiff. In drafting the note, the plaintiff's given name was, through a mistake, incorrectly written. After the note was executed, plaintiff, with the consent of the maker, but without the knowledge or consent of defendant, corrected the payee's name. *Held*, not to be a material alteration. 1872. *Derby v. Thrall* (44 Vt. 413), VIII, 399.

IX. ACTIONS ON.

92. *When premature.* A promissory note not in terms payable at any place, but entitled to grace, was sued upon by the service of a writ at a quarter-past six, P. M., on the last day of grace, no demand of payment having been made. *Held*, that the action was premature. 1869. *Hotes v. Tower* (108 Mass. 65), III, 489.

93. *Burden of proof.* The holder of commercial paper is presumed to be a holder for value, until the contrary is shown; and, by presenting such paper, he makes a *prima facie* case, sufficient to justify a verdict for him, if the defendant does not rebut it. But if the defendant does produce evidence to rebut this presumption, the burden is still on the plaintiff, taking all the testimony together to show a valuable consideration by a preponderance of proof on his side. If, however the defendant, not disputing the original consideration, takes some new ground of defense, as payment, failure of consideration, etc., then the burden is on him to prove this matter of avoidance. 1868. *Atlas Bank v. Doyle* (9 R. I. 76) XI, 219.

94. *Parol evidence.* In an action by the payee against the maker of a promissory note, absolute on its face; *held*, that parol evidence was inadmissible to show that it was conditional. 1870. *Walker v. Crawford* (56 Ill. 444), VIII, 701.

95. — The admissibility of parol evidence, in relation to commercial paper, considered. 1872. *Chaddock v. Vanness* (35 N. J. 517), X, 256.

96. — A. and B. the indorsers of a promissory note, agreed verbally, at the time of the indorsement, that they would be jointly liable in case the maker failed to pay. *Held*, that the agreement was provable and enforceable. 1871. *Ross v. Espy* (66 Penn. St. 481), V, 894.

97. — The contract of indorsement is not within the rule which excludes proof to alter or vary the terms of an *express* agreement. *Id.*

98. *Limitations of action.* The statute of limitations begins to run from the date of a promissory note, payable on demand, with interest. 1872. *Wheeler v. Warner* (47 N. Y. 519), VII, 478.

99. — Upon a promissory note payable in installments, an action of *assumpsit* may be maintained for each installment as it becomes due; and the statute of limitations then begins to run. 1872. *Bush v. Stowell* (71 Penn. St. 208), X, 694.

100. — An offer to pay in confederate money will not revive a note barred by the statute of limitations. 1872. *Simonton v. Clark* (65 N. C. 525), VI, 752.

101. — It seems that a payment by the principal maker of a promissory note, before it has become prescribed, will not prevent the running of the statute as to a co-maker who is surety. 1872. *Knight v. Clemente* (45 Ala. 89), VI, 698.

X. DEFENSES.

102. *Where the maker's signature is procured by fraud.* Where a person signs a paper, believing it to be an ordinary contract for service, which afterward proves to be, or to contain, a negotiable promissory note, such person

having exercised reasonable precaution and prudence to avoid fraud and imposition, is not liable on the note to an assignee before maturity. 1870. *Taylor v. Atchison* (54 Ill. 196), V, 118.

103. — Defendant was induced by fraud, and without negligence on his part, to sign a promissory note, thinking it was a contract making him an agent for the sale of a patent hay fork. *Held*, that the note was void in the hands of a *bona fide* purchaser for value before maturity, 1871. *Gibbs v. Linabury* (22 Mich. 479), VII, 675, and *note*, 685.

104. — In an action on a promissory note by a *bona fide* holder for value before maturity against the maker, *held*, that it is a good defense, that the signature of the maker to such paper was obtained by fraud as to the character of the paper itself, and that the maker was ignorant of such character, and had no intention of signing it, and was guilty of no negligence in affixing his signature, or in not ascertaining the character of the instrument. 1871. *Walker v. Egbert* (29 Wis. 194), IX, 548, and *note*, 554.

105. — Defendant made a promissory note, being fraudulently induced by the payee to suppose that he was signing an instrument of a different character. *Held*, that the note was void in the hands of a *bona fide* holder for value before maturity. 1878. *Briggs v. Ewart* (51 Mo. 245), XI, 445, and *note*, 449.

106. — A person who is induced to sign a promissory note, through the false and fraudulent misrepresentations of another, believing it to be a contract in relation to services, is, nevertheless, liable thereon to a *bona fide* holder who takes it before maturity. 1870. *Douglas v. Matting* (29 Iowa, 498), IV, 288, see *contra*, *note*, 240.

107. The fact that there was no delivery of a promissory note to any person by, or on behalf of the maker, is no defense to an action on the note by a *bona fide* holder, for value, who received it before maturity. 1871. *Kinyon v. Wohlford* (17 Minn. 289), X, 165.

108. **Fraudulent possession and circulation.** A. executed a promissory note payable to B., or order, but did not deliver it. Subsequently B. took the note from the possession of A., against his previous direction and without his knowledge, and put it into circulation. *Held*, that A. was not liable thereon even to a *bona fide* holder. 1870. *Burson v. Huntington* (31 Mich. 415), IV, 497.

109. **Diversion — evidence.** In an action on a promissory note, brought by the indorsee against the indorsers, the defense was that plaintiff, for C. & E. the makers of the note, paid the amount of it to the defendants, the holders, and that after such payment, and after the note had been delivered to plaintiff for C. & E., defendants, at plaintiff's request, indorsed it, with the express understanding that the indorsement was to be used by plaintiff only as evidence to C. & E. that he had paid the note. *Held*, that parol proof of this defense was admissible 1871. *Morris v. Faurot* (21 Ohio St. 155), VIII, 45.

110. — In an action on a promissory note by an indorsee against the indorser, defendant proved that the note was indorsed for the accommodation of the maker, to take up another note, which the defendant had indorsed for him; that the maker did not so use it, but deposited it in a drawer, intending to

destroy it; that plaintiff, by her agent, took it from the drawer without authority, and afterward retained it, with the acquiescence of the maker, as security for other notes against him, and that no one ever received any consideration for the note in suit. *Held*, that this was a good defense. 1871. *Bowman v. Van Kuren*, (29 Wis. 209), IX, 554.

111. A note made on Sunday, but dated on a secular day, is valid in the hand of a *bona fide* holder. *Oranson v. Goss* (107 Mass. 439), IX, 45.

112. Title of plaintiff. In an action against the maker, on a promissory note payable to bearer, the defendant may show that the plaintiff had no title to the note at the time he brought the action. 1872. *Hovey v. Sebring* (24 Mich. 232), IX, 122.

113. Regular course of business. A. obtained defendant's promissory note by fraud. On discovering the fraud defendant demanded a return of the note. A. refused to return it, but, before its maturity, indorsed it to plaintiff, who had no knowledge of the fraud, in trust for A.'s creditors, and the balance for A.'s wife. *Held*, that plaintiff did not take the note "in the regular course of business," and that it was open to defense of fraud. 1870. *Roberts v. Hall* (37 Conn. 205), IX, 308.

114. Vendee's note — evidence. In an action on a promissory note given for the purchase-money for the conveyance of lands with covenants of warranty, evidence of the grantor's want of title is inadmissible, there being no suggestion of fraud, of eviction, or of insolvency. The grantee must rely upon the covenants in his deed. 1870. *Guice v. Sellers* (43 Miss. 52), V, 476.

115. — But when a purchaser of land, upon taking a bond for title, gives in payment therefor a note expressing on its face that it is so given, the note itself will be notice of the vendee's equity in case the title of the land shall prove defective, and an assignee or holder of the note cannot, in case of such defect in the title of the land, recover on the note though he took it before it became due. 1871. *Howard v. Kimball* (65 N. C. 175), VI, 739.

116. Promise of indorsee. To an action of assumpsit by indorsee against indorser of a negotiable promissory note, the defendant pleaded in bar that, at the time of the indorsement, plaintiffs orally promised, in consideration that defendant would indorse in blank and omit from the indorsement the words "without recourse," that they, said plaintiffs, would never have recourse to said defendant, but would save him harmless from all liability on the note, and that in consideration of said promise defendant indorsed the note in blank. On demurrer, *held*, that the plea was insufficient. 1871. *Dale v. Gear* (38 Conn. 15), IX, 358.

117. A judgment against an indorser upon a note held as collateral security for such indorser's individual note, and settlement of claim against indorser upon such judgment, the judgment being thereupon assigned to the indorser, will not bar a recovery against him upon the individual note. 1869. *Burnheimer v. Hart* (27 Iowa, 19), I, 209.

118. Between belligerents. Defendants were copartners, doing business both in Savannah and New York. *Held*, that a bill of exchange drawn dur-

ing the war, by the firm in Savannah, on the firm in New York, was void. 1870. *Woods v. Wilder* (48 N. Y. 164), I, 684.

119. **By accommodation indorser.** A bill of exchange was drawn, accepted and indorsed, with blanks for the date, amount and time it should run, and, in this condition, was delivered by the drawer and acceptor to one to whom they were indebted, to be used in renewal of a bill previously given by them on account of such indebtedness, with instructions to fill up the new bill with the proper date, amount and time upon the maturity of the former bill. *Held*, that the fact that the drawer and acceptor were solvent when the bill was drawn, accepted and indorsed, but were insolvent when the bill was filled up, constituted no defense to an action brought against the accommodation indorser by one who so received the bill and filled up the blanks with full knowledge of all the facts. *Pettors v. Muncie National Bank* (84 Ind. 251), VII, 225.

120. **Consideration — alteration — drunkenness.** In an action by a holder in good faith against the maker, on a promissory note given for an interest in a patent right, *held*, (1) that evidence of the worthlessness of the patent was inadmissible under the general issue; (2) that the maker was not discharged nor his liability affected by the addition of the name of another as surety; (3) that the drunkenness of the maker was not a defense in the absence of proof of fraud, or his absolute incapacity; and (4) that the note being fair on its face, it could only be impeached in the hands of a holder for value, by evidence of bad faith. 1872. *Miller v. Finley* (26 Mich. 249), XII, 806.

121. **A promise to extend the time of the payment of a promissory note made after maturity and without consideration, cannot be enforced, and such promise, founded on an increase of interest to a usurious rate, is likewise without legal consideration and void.** *Ives v. Bosley* (35 Md. 262), VI, 411.

122. — In an action on a promissory note the defense was that defendant had paid the accrued costs of a former action on promise of discontinuance and of an extension of time for payment of the note, and that this action was brought before such time had expired. *Held*, that the promise was void for want of consideration, the plaintiff's right, in the former action, to costs not being denied. 1871. *Parmales v. Thompson* (45 N. Y. 58), VI, 83.

XI. PAYMENT.

123. **Payable in gold.** A promissory note payable, in terms, in American gold, or executed subsequent to the passage of the legal tender act, is not discharged by a tender of United States treasury notes. 1870. *McGoon v. Shirk* (54 Ill. 408), V, 123.

124. — A promissory note, payable in "gold coin or the equivalent thereof in United States legal tender notes," is discharged by a payment in legal tender notes, dollar for dollar. 1870. *Killough v. Alford* (32 Tex. 457), V, 249.

125. **Pounds sterling.** The defendant accepted, payable in Boston, a bill of exchange for £100, drawn in London. *Held*, that he was liable to pay only at the rate of \$4.84 per pound in treasury notes. 1869. *Cary v. Courtenay* (108 Mass. 316), IV, 559.

126. Deposit in bank. Defendant proposed to pay his note to plaintiff, but at plaintiff's request the note was renewed, upon the understanding that it should be deposited in bank for collection. Subsequently defendant deposited in his own name the amount of the note in the bank, which was burned, with the contents, before the note had matured or been deposited. *Held*, that defendant was liable for the amount of the note. *Moses v. Trice* (21 Gratt., Va. 556), VIII, 609.

127. Note not payment. A promissory note given for a debt does not operate as an extinguishment or payment of the debt, unless it be so accepted by the creditor, and a note in renewal is but a continuation of the debt, and if it is not paid at maturity, the creditor may sue upon it, or upon the original cause of action. *Id.*

128. Note due bank. The maker of a note due a bank has the right to pay it in bills issued by the bank. 1873. *Blount v. Windley* (68 N. C. 1), XII, 616.

XII. INTEREST.

129. How computed. Where a promissory note is made payable at a given time after date, with interest payable semi-annually, interest may be computed, in making up the judgment, on all installments of interest overdue and remaining unpaid; but no installments of semi-annual interest will be considered as due after the maturity of the note, because, after that, both the accruing interest and principal are due, not on any particular day, but every day until they are paid. 1868. *Wheaton v. Pike* (9 R. I. 182), XI, 227.

130. Interest on unpaid interest. Where a promissory note is given with a stipulation that the interest is to be paid annually, or semi-annually, the maker is chargeable with interest at the like rate upon each deferred payment of interest. 1868. *Blodoe v. Nixon* (69 N. C. 89), XII, 642.

131. Action for interest after payment of principal. Where a promissory note contains a provision for interest, an action may be maintained for the interest after the principal has been paid. 1869. *Robbins v. Ueck* (83 Ind. 328), II, 348.

XIII. LAW OF PLACE.

132. Place of payment. A bill drawn in Illinois, and delivered to drawee in New York, is governed by the law of the latter place, but if in good faith it is made payable in the former State, any rate of interest, not exceeding that there allowed, may be reserved. 1871. *Freese v. Brownell* (35 N. J. 285), X, 239.

133. Law as to acceptors and indorsers. As to the acceptor, the place of payment, in the absence of other controlling circumstances, will be his place of residence or his address on the face of the bill, but the contract of the drawer is, that upon default of the acceptor and notice, he, the drawer, will pay where he drew the bill, and each indorser is liable according to the law of the place where he indorses. *Id.*

134. Interest. A promissory note made in New Hampshire payable, with interest annually, to a payee resident of that State, is to be construed accord-

ing to the law of that State; and compound interest on such a note is recoverable in an action in Maine, by an indorsee—that being the law of interest of New Hampshire in such cases provided. 1870. *Stickney v. Jordan* (58 Me. 106), IV, 251.

135. **Law of forum.** In an action in Connecticut, against the indorsee of a promissory note, made and indorsed in New York, when it was made payable, *held*, that evidence of a special parol agreement that the indorsement was only for collection, was admissible, although by the law of New York, a parol contract cannot be introduced in evidence to change the legal import of a blank indorsement. 1869. *Downer v. Chesebrough* (36 Conn. 39), IV, 29.

XIV. LOST AND STOLEN PAPER.

136. **Lost.** An action at law will not lie on a lost negotiable promissory note, 1871. *Moses v. Trice* (21 Gratt, Va. 553), VIII, 609.

137. — A bank discounted a draft on the faith of a letter of credit from the drawee and the draft was unavoidably lost in the course of transmission to the special indorsee of the bank. *Held*, that the bank could recover of the drawee in equity, on offering indemnity against the draft. 1869. *Savannah National Bank v. Haskins* (101 Mass. 370), III, 378.

138. — In an action on a lost promissory note, the defense was that defendant had given \$300 and a new note to plaintiff in satisfaction of the lost note. In reply to this defense, plaintiff alleged that he had been induced to accept the \$300 and the new note by defendant's fraudulent representations. The judge ruled that plaintiff could not recover unless he had, before bringing his suit, offered to return the new note and the \$300. *Held* error, and that it was sufficient that the new note be brought into court ready to be given up or canceled on the trial; also, that the \$300 need not to be produced at all, as it was paid upon the lost note. 1871. *Miller v. Woods* (21 Ohio St. 485), VIII, 71.

139. **Stolen.** The purchaser for value, without fraud or bad faith, of stolen negotiable paper, obtains good title thereto; and even negligence on his part will not impair his title. *Welch v. Sage* (47 N. Y. 143), VII, 423.

XV. NON-NEGOTIABLE PAPER.

140. **Concurrent independent promise.** The maker of a non-negotiable promissory note signed and delivered to the payee, to enable him to negotiate it, a separate writing, as follows: "This is to show that the note * * * is all right and will be paid when it comes due." The note was assigned, and, after it became due, the assignee, upon the promise of the maker that he would pay it at a specified time, forbore to sue. In an action on the note by the assignee against the maker, *held* (1), that, notwithstanding the writing, the defense of want of consideration and fraud would be valid (ELLIOTT, J., dissenting); but (2) that the promise constituted a new and enforceable contract. (GREGORY, Ch. J., dissenting.) 1870. *Jaqua v. Montgomery* (33 Ind. 36), V, 168.

141. **Where a person, not a party to a non-negotiable note, indorses it in blank at the time it is made and delivered to the payee, for the purpose of**

giving original validity and security to the contract, *held*, that such person is liable upon the note as a joint-maker, and that his contract is not void under the statute of frauds as being without a consideration expressed. 1870. *Houghton v. Ely* (26 Wis. 181), VII, 52, and *note*, 68.

XVI. FORGED PAPER.

142. **When drawee estopped.** Where the drawee of a bill to which the name of the drawer has been forged, accepts or pays it in the hands of a *bona fide* holder, he is bound by the act, and can neither repudiate the acceptance nor recover the payment. 1871. *National Park Bank v. Ninth National Bank* 46 N. Y. 77, VII, 310, and *note*, 313.

143. **Plaintiff's agent forged his indorsement upon a check payable to plaintiff's order, and transferred it for value to defendant, who collected the amount of it from the drawee.** *Held*, that plaintiff could recover the amount of the check from defendants. 1871. *Buckley v. Second National Bank* (35 N. J. 400), X, 249.

144. **Writing note over signature.** A wrote his name upon a piece of blank paper at the request of B, who afterward, without the knowledge or consent of A, wrote a promissory note over the signature. In an action on the note by an innocent holder, *held*, that the instrument was a forgery, and that A was not liable thereon. 1870. *Caulkins v. Whisler* (29 Iowa, 495), IV, 236.

145. **Detaching condition.** The detachment of a written condition made at the same time, and upon the same paper, from a promissory note, if altering its character and done fraudulently, is forgery. 1869. *State v. Stratton* (27 Iowa, 420), I, 282. See, also, *Wait v. Pomeroy* (20 Mich. 425), IV, 395; *Benedict v. Cowden* (49 N. Y. 396), X, 332, and *note*, 389.

146. **Forged renewal note.** The receipt of a new promissory note, a signature to which is afterward found to be forged, does not operate as a payment of the original note or an extinguishment of the right of action thereon. 1870. *Goodrich v. Tracy* (43 Vt. 314), V, 281.

147. — Appellant, for M.'s accommodation, indorsed his note, which was discounted by appellee, with the knowledge that it was an accommodation note. At its maturity M. presented a second note, purporting to have appellant's indorsement thereon, which was accepted in good faith by the appellees as a substitute or renewal of the first note. M. was insolvent. Appellant's indorsement on the second note was a forgery. In an action on the first note, *held*, that appellant was not discharged. 1871. *Allen v. Sharpe* (37 Ind. 67), X, 80.

See BANKS AND BANKING; BOND; PARTNERSHIP; USURY.

BONA FIDE PURCHASER — See VENDOR AND PURCHASER.

BOND.

1. **Signature procured by fraud.** An illiterate man signed a bond being induced thereto by the fraudulent representation that it was a petition. *Held*, that he was not liable thereon although the obligee was not aware of the fraud.

1871. *Schuylkill County v. Copley* (67 Penn. St. 386), V, 441. See S. P. BILLS AND NOTES.

2. The sureties to a bond are not holden if it be not executed by the person named as principal. 1871. *Russell v. Annable* (109 Mass. 73), XII, 665.

3. Stolen. A purchaser for value, without fraud or bad faith, of stolen negotiable bonds, obtains good title thereto. 1873. *Welch v. Sage* (47 N. Y. 148), VII, 428.

4. Good faith of purchaser. Plaintiff made advances upon coupon bonds, payable to bearer, which had no certificates attached when he received them. A clause in the bonds stated, in effect, that upon the surrender of the certificate and bond the holder was entitled to full paid preferred stock. Held, that the absence of the certificates was not of itself sufficient to charge plaintiff with want of good faith. *Ib.*

5. Coupons negotiable. It is settled by the current of American authorities that a coupon bond is negotiable, and that its coupons may be detached and negotiated separately by simple delivery, and sued on separately from the bond and this after the bond itself has been paid and satisfied, as well as before. 1866. *National Exchange B'k v. Hartford, etc., R. R. Co.* (8 R. I. 875), V, 582.

6. — A coupon once detached and negotiated, ceases to be a mere incident of the bond, and becomes an independent claim, and its amount, with interest after demand of payment, is recoverable under a general count in debt. *Ib.*

The coupons of government bonds are negotiable instruments, and conversion will not lie against one who has received, as agent, in good faith, and has sold, stolen coupons and has turned over the proceeds to his principal. 1869. *Spooner v. Holmes* (102 Mass. 508), III, 491.

BOND (OFFICIAL) — See OFFICER.

BOUNDARY.

1. Where the legal line between two towns differs from the line universally recognized by the inhabitants of the towns, a deed describing a boundary in terms equally applicable to either line, contains a latent ambiguity, which may be cleared up by oral evidence. 1868. *Putnam v. Bond* (100 Mass. 58), I, 82.

2. Although the presumption would be that the deed conveyed to the legal line, that presumption would be rebutted by proof that a different line had been adopted and universally recognized by the inhabitants of the two towns. *Ib.*

3. There is no absolute presumption of law that parties to a deed intend to govern themselves by a boundary line adopted by town or town officers, and which does not accord with the legal line; and where the words which they use are equally applicable to either, it is for the jury, upon a consideration of all the circumstances, to determine which line was actually meant. *Ib.*

4. A parol agreement made between the proprietors of adjoining lands to settle a doubtful boundary line, if acted upon for a long period mutually, will be binding, although the period is not equal to the "twenty years" sufficient to establish adverse possession. 1870. *Smith v. Hamilton* (20 Mich. 423), IV, 398.

BREACH OF PROMISE OF MARRIAGE—*See* MARRIAGE.BRIDGES—*See* HIGHWAY.

BROKER.

1. **Real estate: commissions.** A broker employed to sell real estate must produce a person who ultimately becomes a purchaser before he is entitled to his commissions, unless his failure to do so is occasioned by the fault of the vendor. 1869. *Richards v. Jackson* (81 Md. 250), I, 49.

2. — The defendant employed a broker to sell certain real estate for a fixed compensation, advising him of his title; the broker found a customer and brought him to the defendant, but no sale was effected on account of the defective condition of defendant's title. The property was afterward sold by the defendant, at auction, to a third person, and brought a higher price than the said customer had once offered. *Held*, that the broker was entitled to no compensation on the contract for services. 1869. *Tombs v. Alexander* (101 Mass. 255), III, 349.

3. — A party having employed a broker to sell real estate, may notwithstanding, negotiate himself, and, if he does so without any agency of the broker, he is not liable to the latter for a commission. To entitle the broker to his commission, he must be an efficient agent in, or the procuring cause, of the contract. 1872. *McClave v. Puine* (49 N. Y. 561), X, 431.

4. — The defendant sent a proposal to a broker in these words: "If you send or cause to be sent to me, by advertisement or otherwise, any party with whom I may see fit and proper to affect a sale or exchange of my real estate, above described, I will pay you the sum of \$200." The broker found a person who proposed to purchase the property, but the sale was not effected. *Held*, that the broker was not entitled to compensation. 1869. *Walker v. Tirrel* (101 Mass. 257), III, 352.

5. **Authority.** H. told A. to sell certain lots for \$2,000. *Held*, that this was no more than a mere authority to A. to find H. a purchaser at the price named, and did not authorize him to execute a contract of sale to D., the purchaser whom he found. 1870. *Duffy v. Hobson* (40 Cal. 240), VI, 617.

6. **Stock broker.** A broker who purchases stock for another broker, whom he has reason to believe to be acting as agent, although for an unnamed principal, cannot hold the stock or its proceeds to secure the payment of a balance due him by such other broker. 1870. *Fisher v. Brown et al.* (104 Mass. 259), VI, 285.

7. — Where a broker purchases stock, through a correspondent, in pursuance of orders from a customer, and in the usual mode of dealing, but the certificates are not called for nor the stock paid for, the broker after waiting a reasonable time, may sell or cause to be sold, the stock so purchased, on notice to the customer, and recover for the loss, if any, from the customer. 1869. *Rosenstock v. Tormey* (32 Md. 169), III, 125.

See BAILMENT.

BUILDING CONTRACT — *See* CONTRACT.

BURDEN OF PROOF.

1. — The burden is on the proponent of a will, not only to prove the due execution thereof, but also the testamentary capacity of the testator. 1870. *Williams v. Robinson* (42 Vt. 658), I, 859.

See CRIMINAL LAW; VENDOR AND PURCHASER.

BURGLARY — *See* CRIMINAL LAW.

BY-LAWS — *See* CORPORATION.

CAPITAL — *See* TRUST.

CARRIER.

I. CARRIERS OF PROPERTY.

1. *General principles.*
2. *Obligation to carry.*
3. *Limitation of liability by contract.*
4. *Delivery by carrier.*
5. *Termination of liability.*
6. *Liability beyond line.*
7. *Connecting lines.*
8. *Express companies.*

II. CARRIERS OF PASSENGERS.

1. *General principles.*
2. *Liability for negligence in carrying.*
3. *Passenger's baggage.*
4. *Drover's ticket.*

III. CARRIERS OF CATTLE.

IV. CARRIERS BY SEA — *See* SHIP AND SHIPPING.

V. LIABILITY FOR NEGLIGENCE — *See* NEGLIGENCE.

VI. LIABILITY FOR SERVANTS — *See* MASTER AND SERVANT.

I. CARRIERS OF PROPERTY.

1. *General principles.*

1. **Who are — tow-boats.** In Pennsylvania steam tow-boats or tugs are not common carriers as regards the vessels they have in tow and their cargoes. 1870. *Brown v. Olegg* (63 Penn. St. 51), III, 523.

2. **Ferryman.** One who keeps a ferry for his own use and for the convenience of customers to his mill, but who charges no ferriage is not a common carrier, and is only bound to ordinary diligence. *Self v. Dunn* (42 Ga. 528), V, 544. *See* FERRY.

3. **Express companies.** Express companies engaged in carrying goods for hire, but in conveyances owned and operated by others, are common carriers. 1870. *Christenson v. American Express Co.* (15 Minn. 270), II, 123, and *note*.

4. **To carry without preference.** The defendants contracted with the Eastern Express Company to give the latter a certain share in the baggage and mail car attached to passenger trains for the carriage of their goods, and agreed not to let any similar space in any car attached to passenger trains to any other persons or express carriers during the continuance of the contract. Plaintiffs, another express company, offered packages to be transported on defendant's passenger trains, which the defendants refused to receive or transport. *Held*, that the defendants were liable to plaintiffs for such refusal. 1869. *New England Express Co. v. Maine Central R. R. Co.* (57 Me. 188), II, 81.

5. **Preference as to wharfage.** Plaintiff was accustomed to ship coal by defendants' railroad for transportation beyond their line upon the Delaware river. Defendants had also allowed plaintiff, for a certain consideration, to use their wharf at the river terminus of the railroad; but, subsequently, there not being room for all the shippers, they denied plaintiff the wharf facilities, while they allowed others to use the wharf. *Held*, that although transportation by defendants, common carriers, was necessarily open to the public without discrimination, yet wharfage was within the discretion of defendants, and a mandatory injunction would not lie compelling them to allow wharfage facilities to plaintiff as well as others. 1871. *Audenried v. Philadelphia & Reading Railroad Co.* (68 Penn. St. 370), VIII, 195.

6. **Custom or usage will control the general law of liability of common carriers.** 1871. *McMasters v. Pennsylvania R. R. Co.* (69 Penn. St. 374), VIII, 264.

7. **Lex loci.** When a contract is made in one State to transport goods over a line extending through two or more States and the goods are lost, the rights of the parties will be governed by the laws of the State where the loss happened. *Barter v. Wheeler* (49 N. H. 9), VI, 484; *Gray v. Jackson* (51 N. H. 9), XII, 1; but see, as to passengers, *Dyke v. Erie Ry. Co.* (45 N. Y. 118), VI, 48.

8. **Interest on recovery.** In case of loss for which the carrier is found to be liable, interest is recoverable upon the value of the property from the day of its loss. 1869. *Mote v. Chicago, etc., R. R. Co.* (27 Iowa, 22), I, 212.

9. **Notice to agent.** A carrier is not bound by notice to his agent unless it relates to his particular business, and is given when he is acting within the scope of his authority. 1869. *Congar v. Chicago, etc., Ry. Co.* (24 Wis. 157), I, 164.

10. **Liability for goods missent.** Where the consignor of goods is guilty of negligence, in not properly marking their destination upon them, common carriers are not liable for injuries arising from their being missent. 1869. *Congar v. The Chicago & Northwestern Railway Co.* (24 Wis. 157), I, 164.

11. **Delivery to carrier by vendor.** A carrier, designated by the buyer, may receive the goods purchased, so as to make a compliance with the statute of frauds. 1871. *Cross v. O'Donnell* (44 N. Y. 661), IV, 721.

12. — Where the contract of purchase is silent as to the method of delivery, a delivery, by the vendor to a common carrier in the usual course of business, transfers the title to the vendee. 1870. *Magruder v. Gage* (83 Md. 344), III, 177

13. **Stolen goods** — may be recovered from carrier. The owner of goods which have been obtained from him by fraud and have been placed in charge of a carrier, may recover them from the carrier. *Bassett v. Spofford* (45 N. Y. 887), VI, 101.

14. **Lien for freight.** A carrier's lien on goods transported is only co-extensive with his right to claim and recover freight. Therefore, where carriers have, by delay in transporting and delivering goods, injured the consignee to an amount equal to their charge for freight, their lien ceases, and the consignee may maintain replevin for the goods without paying or tendering the freight. 1869. *Dyer v. The Grand Trunk Railroad Co.* (42 Vt. 441), I, 850.

15. — One who carries property for the convenience, and at the request of the bailee thereof, has no lien thereon for services as against the owner. 1871. *Gilson v. Gwinn* (107 Mass. 126), IX, 18.

2. *Obligation to carry.*

16. **Damages for neglect to forward.** Where a common carrier, from negligence, omits to transport merchandise within a reasonable time, and its market value falls in the mean time, the measure of damages is the difference in its value, at the place of delivery, at the time it ought to have been delivered, and at the time of its actual delivery. 1871. *Ward v. The New York Central Railroad Co.* (47 N. Y. 29), VII, 405.

17. — The plaintiff having a lot of wool which he had contracted to sell at a certain price, deliverable in B., called upon the agent of defendants, common carriers, and told him that he wished to send it to B. immediately, and that it was sold if it could be forwarded at once. The agent told him that it should go without fail. The plaintiff delivered it accordingly, but the defendants neglected to forward it for several weeks, during which time it depreciated in value, and on its arrival in B. the purchaser declined to receive it on account of this delay, and the plaintiff was compelled to sell it at a diminished price. *Held*, that plaintiff could recover damages for the depreciation in its market value, and also for the loss of his chance to sell. 1869. *Deming v. Grand Trunk Railway Co.* (48 N. H. 455), II, 267.

18. **Perishable property — delay in transportation — military possession — damages.** In an action against defendants, as common carriers, to recover damages occasioned by an alleged neglect of duty in failing to deliver a number of car loads of corn at Cairo, Illinois, within a reasonable time after receiving it for transportation, whereby it became heated and of little value; *held* (1), that defendants were not discharged from liability under a clause in the receipt releasing them from loss on "perishable property," corn not being such in the commercial sense; (2) that it was no defense that the military authorities of the United States had ordered defendants to give a preference to the property of the government in transportation, where they failed to show any interference on the part of army officers which prevented them from sending this corn forward in the usual time; (3) that it was no defense that the track at Cairo was obstructed with cars filled with rejected government corn, where the evidence showed that, immediately after the rejection of such corn, the gov-

ernment officers ceased to control it, and it relapsed into the hands of defendants, who could have unloaded it in a day or two; (4) that if the corn was shipped under a special contract, the contract price should be taken as the basis for estimating the damages; otherwise the market price at Cairo at the time the corn ought to have arrived, must govern. 1870. *Ill. Cent. R. R. v. McClellan* (54 Ill. 58), V, 88.

19. **Where usual route is obstructed.** Plaintiff shipped goods at Irvineton, Penn., to be transported to Boston by defendants, common carriers, and received a bill of lading containing a condition that "this merchandise may be carried in box cars, covered skeleton cars, or open platform cars; if destined beyond Philadelphia, it may be transported by water, in vessels, boats, barges, or lighters, and if so destined to any point beyond, the same may be intrusted or delivered in the cars of this company, or otherwise, to any other railroad or transportation company or agent," etc. The usual route of defendants was by rail to Philadelphia, and thence by water to Boston. *Held*, that defendants were not bound to send the goods by rail from Philadelphia, when there was a temporary obstruction in the water communication. 1871. *Empire Transportation Co. v. Wallace* (68 Penn. St. 802), VIII, 178.

8. *Limitation of liability by contract.*

20. **May limit liability.** A common carrier may, by special contract, avoid or limit his liability at common law as an insurer of property intrusted to him against loss or damage by fire occurring without fault on his part. 1868. *Grace v. Adams* (100 Mass. 505), I, 131.

21. **Presumption as to knowledge of contents of receipt.** A receipt in proper form delivered to the plaintiff by the defendants as their contract, with the terms and conditions expressed in the body of it in a way not calculated to escape attention, and its acceptance by the plaintiff at the time of the delivery of his package, without notice of dissent, authorized the defendants to infer his assent to the terms. *Id.*

22. — The plaintiff, a passenger in a railway car, delivered to the messenger of a baggage express two checks for two packages of baggage, which the messenger agreed to transport from the railway terminus to another point, and deliver to plaintiff. At the time of taking the checks, the messenger entered their numbers on a printed form, purporting to be a receipt containing certain stipulations, limiting the company's liability, and handed it to the plaintiff. The car was dark, so that it would have been impossible to read the stipulations, and plaintiff did not read them. The stipulations were in small print, but a direction to read this receipt was in conspicuous print. *Held*, that the plaintiff was not presumed to know the contents of the receipt, or to assent to them. 1870. *Blossom v. Dodd* (48 N. Y. 264), III, 701.

23. — Plaintiff delivered to defendant for transportation a trunk, and received a receipt which provided that the plaintiff, in case of loss, should not demand beyond the sum of fifty dollars, fixed as the value of the article forwarded, unless otherwise expressed. *Held* (1), that it was a presumption of law that plaintiff was acquainted with the contents of the receipt, and (2)

that by accepting the receipt the plaintiff assented to and was bound by its conditions. 1870. *Belger v. Dinsmore* (51 N. Y. 166), X, 575; See, however, *Frankenberg v. Ill. Cent. R. R. Co.* (54 Ill. 88), V, 92.

24. — But a passenger is not presumed to know or assent to a printed notice in his ticket limiting the weight and value of his baggage. 1872. *Rawson v. Penn. R. R. Co.* (48 N. Y. 212), VIII, 548.

25. Cannot contract against negligence. A common carrier cannot, by contract, relieve himself from liability for the loss of goods delivered to him for transportation, which has been occasioned by his own or his servant's negligence, however slight, or where such negligence has in any degree contributed to such loss. 1871. *Michigan Southern, etc., R. R. Co. v. Heaton* (87 Ind. 448), X, 89, and note, 96.

26. — The plaintiff shipped goods over the defendants' railroad. By a clause in the bill of lading, the defendants were released from liability from damage or loss to any article from or by fire or explosion of any kind. The goods were destroyed while on one of defendants' trains, by fire, which caught from a spark from the engine of the train. *Held*, that the defendants were not, by the stipulation in the bill of lading, released from liability for loss arising from its own negligence. 1870. *Steinweg v. Erie Railway* (48 N. Y. 128), III, 678.

27. — Where a common carrier receives goods in course of through transportation, under a stipulation that it shall not be liable for "damage or loss by fire" it is, nevertheless, liable in case of damage or loss by fire resulting from its own negligence; but affirmative proof of such negligence must be adduced to obtain a recovery. 1870. *Lamb v. Camden & Amboy R. R. Co.* (46 N. Y. 271), VII, 827.

28. — An oil company shipped a quantity of oil by the Empire Transportation Co., under a condition, set forth in the receipt, that the oil company should assume all risk, and the transportation company should be released from all responsibility for loss or damage. The car containing the refined oil was coupled in a train to one containing crude oil, which took fire from sparks from the engine, and, on account of a defect in the coupling, could not be separated from the car of refined oil, and both were consumed. *Held*, that the transportation company was liable, notwithstanding the condition in the receipt. 1870. *Empire Transportation Co. v. Wamsutta Oil Co.* (68 Penn. St. 14), III, 515.

29. — A declaration in an action on contract alleged that the defendants, as common carriers, received the plaintiffs' goods for transportation, and that the goods were injured while in defendants' custody, through the fault of the defendants. The answer, after admitting the receipt of the goods for transportation by the defendants as common carriers, denied that the goods were injured while in their custody, or while they were responsible, or by their fault, and alleged that the defendants had taken reasonable care of the goods while in their custody, and that they were not responsible for the injury, if any, because, by special contract, the risk of injury had been assumed by the plaintiffs. *Held*, that upon the pleadings actual negligence of the defendants might be given in evidence; and that the special contract, if alleged, would not exempt the defendants from liability for injuries caused by their own negli-

gence. 1869. *School District v. Boston, Hartford and Erie R. R. Co.* (103 Mass. 552), III, 502.

30. Loss by fire — burden of proof. A bill of lading given by a railroad company on receipt of goods for transportation contained the following clause "The dangers incident to railroad transportation, fire and all other unavoidable accidents, excepted." The goods were destroyed by fire, and, in an action against the company to recover their value, *held* (1), that the exception of loss by "fire" was a limitation upon the common-law responsibility of the company; (2) that the exception was of "fire," whether *unavoidable* or not, provided it was not by the negligence of the company; and (3) that the burden of proof of negligence was upon the plaintiff, the common-law liability being thus changed. 1871. *Colton v. Cleveland and Pittsburg R. R. Co.* (87 Penn. St. 211), V. 424.

31. — When common carriers by water, in their bill of lading made at Toledo, Ohio, stipulate to deliver goods to consignees at Concord, N. H., the dangers of navigation, fire and collisions on the lakes and rivers and the Welland canal excepted, it was *held*, that this limitation did not extend to losses by fire on the railroads. *Barter v. Wheeler* (49 N. H. 9), VI. 434.

32. Exceptions apply to connecting companies — "all rail" route — deviation. Defendants received goods as the last of a series of connecting railroads, the first of which had contracted with plaintiff to transport the goods "all rail," and to deliver them, "unavoidable accidents of the railroad and fire in depot excepted." *Held* (1), that the terms of the contract permitted all necessary transportation by water, as by ferries, and that the connecting companies were entitled to the benefit of the exception in case of loss; but (2) that as defendants' line was out of the usual "all rail" route to destination, and required extended transportation by water, some twenty miles, they were not entitled to the benefit of the exceptions, but were liable as insurers in case of loss by one of the perils excepted. 1871. *Maghee v. The Camden and Amboy R. R. Co.* (45 N. Y. 514), VI, 124, and *note*, 132.

4. Delivery by carrier.

33. Delivery to any person. Common carriers deliver property at their peril, and must take care that it is delivered to the right person, for if the delivery be to the wrong person, either by an innocent mistake or through fraud of third persons, as upon a forged order, they will be responsible, and the wrongful delivery will be treated as a conversion. A qualified refusal, by a common carrier, to deliver goods on demand of one entitled to them, does not constitute a conversion if the qualification is reasonable and in good faith; and where the person making demand omits to produce any evidence of title to or to identify himself as the consignee, it is a question for the jury whether the qualification is reasonable, and the true reason for not delivering the goods. 1871. *McEntee v. The New Jersey Steamboat Co.* (45 N. Y. 84), VI, 28, and *note*, 30.

34. — The plaintiffs were induced, by representations of one Collins, to send goods addressed to "J. F. Roberts, Roxbury, Mass." The goods were sent over defendant's line. Collins then went to Boston, and claimed and received the

goods of defendant, under the name of "J. F. Roberts," which name he had assumed for the purpose of getting the goods. There was no such person as "J. F. Roberts," and no person who was known or passed by that name. *Held*, that the defendants were liable to the plaintiff for the value of the goods. 1870. *Winslow v. Vermont, etc. R. R. Co.* (42 Vt. 700), I, 865.

35. — Where goods, which have been fraudulently ordered by an individual in the name of a fictitious firm, and have been shipped in compliance with the order, directed to such firm, are delivered by the carrier to a stranger, without requiring evidence of his identity, the carrier is liable to the consignor for their value. 1872. *Price v. Oswego & Syracuse R. R. Co.* (50 N. Y. 213), X, 475.

36. To deliver as directed by bill of lading. A railroad company, bound by a bill of lading to deliver goods on payment of freight and "presentation of a duplicate" bill, is responsible if it makes delivery without such presentation. Such a clause in a bill of lading is for the benefit of the consignor. 1870. *McEwen v. Jeffersonville, Madison and Indianapolis R. R. Co.* (33 Ind. 368), V, 216.

37. Delivery according to custom. Defendants, a railroad company, delivered a barrel of sugar at a way station where they had no warehouse, but gave no notice to plaintiff, the consignee. It was proved that it was the custom for consignees, at that station, to be present to receive goods directed to them. *Held*, that a delivery on the platform was a good delivery under the custom. 1871. *McMasters v. Pennsylvania R. R. Co.* (69 Penn. St. 374), VIII, 264.

38. Liable for damages for non-delivery. Defendant, a common carrier, transported goods consigned to plaintiff to the place of destination and there stored them in a warehouse, but neither gave plaintiff notice of their arrival nor made any effort to find the plaintiff or to give him notice of such arrival. Some few months after plaintiff received information that the goods had arrived. In the meantime the goods had depreciated in value. *Held*, that defendant was liable for the damage plaintiff had sustained. 1872. *Zinn v. New Jersey Steamboat Co.* (49 N. Y. 443), X, 402.

39. Negligent delivery — bill of lading. The plaintiffs shipped goods by vessel of defendants, common carriers, from England for New York, and received a bill of lading, providing that the defendants should not be liable for loss occasioned, among other things, by "any act, neglect or default whatsoever of the pilot, master or mariners." On the arrival of the vessel in New York, the officer discharging the cargo, without authority from the plaintiffs, delivered the goods to a carman, who was not empowered by the plaintiffs to receive them, and the goods were thereby lost. *Held*, that the loss was the result of the gross carelessness of the defendants, and was not covered by the exceptions in the bill of lading. 1870. *Guillaumes v. Hamburgh, etc., Co.* (42 N. Y. 212), I, 512.

40. Delivery not excused by wrongful attachment. Goods were taken from a common carrier under an attachment against a person not the owner. *Held*, no defense to an action by the owner for breach of contract to deliver the goods. 1870. *Edwards v. White Line Transit Co.* (104 Mass. 159), VI, 213.

41. **Delivery of goods marked C. O. D.** An agent sold goods on credit. The principal sent them marked C. O. D. The carrier, on the written order of the agent, delivered the goods without receiving the cash. *Held*, that it was a question for the jury whether the mark C. O. D. was notice to the carrier of the agent's want of authority. 1871. *Daylight Burner Co. v. Odlin* (51 N. H. 56), XII, 45.

42. **Delivery on connecting track—mandamus.** A railroad company refused to receive freight at a way station, to be delivered at an elevator five hundred feet beyond their terminus, on a track owned by another company, but which they had sometimes used for delivery at the elevator. *Held*, that a writ of *mandamus* would not lie compelling the company to receive freight for such delivery. 1870. *The People v. The Chicago & Alton R. R. Co.* (55 Ill. 95), VIII, 681.

43. — Although a railway company cannot be compelled to deliver freight beyond its own line, simply because there are connecting tracks over which it might pass by paying track service, but which it has never made a part of its own line, yet a writ of *mandamus* will lie compelling the company to deliver at an elevator situated upon tracks operated in common with other companies, notwithstanding the delivery may be at an additional expense and the company may have contracted with other elevators for exclusive delivery to them. 1870. *The Chicago & Northwestern R. R. Co. v. The People ex rel. Hempstead* (56 Ill. 865), VIII, 690.

44. **Lien for cartage.** Where a common carrier by water, after landing goods at the wharf in the city to which they are consigned, voluntarily assumes the delivery of them to the consignee at his place of business, no lien for cartage arises. 1870. *Richardson v. Rich* (104 Mass. 156), VI, 210.

45. **Delivering to connecting line.** While in the absence of a special agreement a carrier is only liable to the extent of his route, and for safe storage and delivery to the next carrier, yet if he store the goods in his own warehouse at the end of his line without delivery or notice, or attempt to deliver to the next carrier, his liability as a carrier will continue. 1870. *Lawrence v. The Winona & St. Peters R. R. Co.* (15 Minn. 390), II, 180, and *note*, 141.

46. — The defendants, common carriers, received for transportation, from a connecting carrier, goods marked for M., a point beyond their line. On the arrival of the goods at W., the terminus of the defendants' line, they were stored in their warehouse, where they were destroyed by fire. Some time previously the defendants, for the purpose of increasing the business of their road by drawing off the freight for M. for another road to M., connecting with their road at an intermediate point, had agreed with P., another carrier, that they would deliver to him all freight consigned to M., provided he would convey it regularly and at certain rates from W. to M., and, in pursuance of this agreement, it was their custom to store all such freight in their warehouse until a load accumulated, when P. would send a team and take it. The plaintiff's goods were so stored at the time of their destruction; but no notice thereof was given to P. nor to the consignee. In an action to recover the value of the goods, *held*, that the defendants were liable as common carriers. *Id.*

47. *Carriers by water — delivery by.* The plaintiffs shipped, at Liverpool, on the defendant's vessel, 381 cases of licorice, consigned to M. at New York. The vessel arrived at New York on the 25th of August, 1860, and M. was notified. He paid the duties on 181 cases, and entered 200 cases for warehousing, receiving a permit to place them in certain U. S. bonded warehouses, and delivered on board the ship a permit for the discharge of the goods. The defendant was notified that the goods were perishable, and must not be put out in rainy weather. The defendant's agent promised to discharge them in fair weather; and on the 19th of September, he notified the plaintiff's agent that if the next day was fine, he would discharge the licorice. On the 20th, it rained, in the morning, until 9 o'clock; again at 2:30 P. M.; and from 4:30 P. M. continued to rain during the rest of the day and night. At 9 A. M. the defendant's agent began to land the goods upon the wharf, and continued until noon, when the consignee was notified. At that time nearly all the cases were placed upon the wharf, and all were unloaded before 2 P. M. They could not be removed until weighed. A weigher arrived at 2:30 P. M., and finished weighing at 5 P. M. The consignee, though using great diligence, was unable to remove the licorice that day, before the warehouse closed, and a portion of it was wet and damaged by the rain. *Held*, that the referee was justified in finding, as conclusions of law, that the defendant landed the goods without reasonable notice to the consignee to enable him to have the same weighed, carted and protected from the weather; that he placed the property on the dock, with a knowledge of its perishable character, on a day unsuitable to its landing and cartage; and that, in so doing, he was guilty of negligence, and a breach of his duty and obligation as a carrier. 1878. *McAndrew v. Whitlock* (52 N. Y. 40), XI, 657.

48. — A discharge of cargo from a vessel, with the knowledge and assent of a custom-house officer placed on board for the purpose of superintending the unloading, is not such a delivery as relieves the carrier from his liability as such. *Id.*

49. — A carrier of goods, by water, may land them at a wharf, at the port of destination, but not until after he has given the consignee due notice of their arrival and unlading, and afforded him a reasonable time to take charge of and secure them. In the meantime, instead of leaving them on the wharf, it is his duty to take care of them for the owners. *Id.*

50. — Where the consignee and owner of goods of a bulky nature is present soon after their arrival, accepts the consignment and pays the freight, and the goods are landed on a public wharf, with notice to him, their legal custody is transferred from the carrier to the consignee, whose duty it is to protect them; and if, in consequence of his neglect to remove them, they suffer damages from the weather, the carrier is not responsible. 1872. *Goodwin v. Baltimore & Ohio R. R. Co.* (50 N. Y. 154), X, 457.

51. *Imported goods.* The obligation of a carrier of imported goods does not require a delivery in contravention of the revenue laws; but where the owner has obtained the requisite permit to remove the goods, the fact of their removal, under the supervision of the proper revenue officers, does not affect

the liability of the carrier. 1871. *Redmond v. Liverpool, etc., Steamboat Co.* (46 N. Y. 578), VII, 890.

5. Termination of Liability.

52. Termination of liability. The responsibility of common carriers, as such, continues after the goods have reached their destination, until the consignee has had reasonable time to call for, examine and take them. 1870. *Winslow v. Vermont, etc. R. R. Co.* (43 Vt. 700), I, 865.

53. — The liability of common carrier, as such, does not terminate until notice has been given to the consignee of the arrival of the goods, and a reasonable time has elapsed for their removal. 1870. *Hill Manuf. Co. v. Boston & Lowell R. R. Co.* (104 Mass. 123), VI, 202.

54. — Where goods transported by a railroad are not called for by the consignee when they arrive at their destination, and are then deposited in the warehouse of the company, the liability of the railroad company, as insurer, terminates. 1871. *Mobile & Gerard R. R. Co. v. Prewitt* (46 Ala. 63), VII, 586, and note, 591.

55. — Goods were consigned to the owner, "care M. & G. R. R." "station 6;" they arrived at their destination, and were ready for delivery in half an hour; the owner, who lived twenty miles distant from the station, did not call for them, and they were stored in the warehouse of the railroad company. Six days afterward the goods were destroyed by accidental fire. *Held*, that the liability of the company, as insurer, had terminated. *Id.*

56. — Common carriers are bound as carriers to deliver goods to the consignee, provided he appear within a reasonable time to receive them, and the consignee is entitled to a reasonable opportunity to receive his goods before the carrier's liability is changed to that of warehouseman. 1871. *Graves v. The Hartford & N. Y. Steamboat Co.* (88 Conn. 143), IX, 369.

57. Goods lost in storage. Where, through the negligence of the servants of common carriers, goods shipped over their line are not delivered to the consignee when called for by him, and they are afterward destroyed while in the freight department of the carriers, the latter are liable for the loss. 1869. *Meyer v. The Chicago, etc., R. R. Co.* (24 Wis. 566), I, 207.

58. — But where a common carrier, a railroad company, by agreement with the consignee and for mutual convenience, stores goods which have arrived at their destination, in its freight house, for the night, and they are destroyed by fire without its fault, it will not be held liable. 1871. *Fenner v. The Buffalo and State Line R. R. Co.* (44 N. Y. 505), IV, 709.

59. A common carrier by water is not released from all liability by the deposit of goods upon the wharf, at a reasonable hour with due notice to the consignee. If the consignee does not appear to claim or receive the goods, it is the duty of the carrier to provide a proper place of storage, or in case of imported goods, subject to duty, to see that they are in proper custody. 1871. Redmond v. The Liverpool, New York & Philadelphia Steamboat Co. (46 N. Y. 578), VII, 890.

6. *Liability beyond line.*

60. *Liability beyond line.* A corporation, established for the transportation of goods for hire between certain points, and receiving goods directed to a more distant place, is not responsible beyond the end of its own line, as a common carrier, but only as a forwarder, unless it make a positive agreement extending its liability. 1868. *Burroughs v. Norwich & Worcester Railroad Co.* (100 Mass. 26), I, 78.

61. — Where a railroad company, as common carrier, receives goods marked for transportation beyond its line, it assumes the common-law liability for loss or damage, whether occurring on its own or another line; but a receipt specifying that it will not be liable for any loss unless occurring on its own line, will be construed as a special contract, limiting its liability to its own line, if it is found, by a jury, that the consignors understood the terms of the receipt and assented to them. LAWRENCE, MCALLISTER and THORNTON, JJ., dissented. 1870. *Illinois Central Railroad Co. v. Frankenberg* (54 Ill. 88), V, 92.

62. — Where goods were shipped over the line of common carriers, marked for a point beyond their line, and they gave a receipt therefor, wherein they agreed to forward and deliver the said goods, leaving the name of the consignee and the place of deposit blank,—*Held*, that the receipt constituted a special contract that the carriers would deliver the goods at the place of destination, even beyond their own route. 1870. *Outts v. Brainerd* (42 Vt. 566), I, 353.

63. *Authority of agent to bind carrier beyond route.* A station agent of a railroad corporation has not authority to bind such corporation as common carriers beyond the line of its own road, by signing receipts furnished in blank by a shipper, and by the terms of which the corporation undertakes to forward and deliver the goods to the order of the consignee at points on a connecting line, where it appears that such agent acted without special authority, and without the knowledge of the corporation, and that the officers of such corporation had furnished such agent with blank forms of receipts, to be given for goods shipped beyond their own line, by which it was provided, that, in case of loss or damage of the goods, the corporation only should be responsible in whose actual custody the goods should be at the time. 1868. *Burroughs v. Norwich, etc., R. R. Co.* (100 Mass. 26), I, 78.

64. *Contract to carry beyond line.* A railway company may, by contract, assume to carry goods beyond its own line, and where such contract exists, the company will be liable as common carriers for the entire route. 1870. *Hill Manufacturing Co. v. Boston & Lowell R. R. Co.* (104 Mass. 123), VI, 208.

65. *Loss beyond line—"lex loci."* Defendants, common carriers between P. and B., took a package at P. for R., a place in another State beyond their terminus. At B., the end of their line, according to custom they delivered it to another carrier and it was by him lost. *Held* (1), that whether or not defendant undertook to carry the package beyond B. was a question of fact, and the judge who tried the facts having found that there was no such undertaking, a verdict for the defendant would not be set aside; (2) that if goods be lost *in transitu* from one State to another, the *lex loci* where the loss occurs governs the

rights of the parties. The cases relating to the liability of carriers beyond their line considered. 1871. *Gray v. Jackson* (51 N. H. 9), XII, 1, and *note*, 40.

66. Presumption as to loss. Goods, in a box, were transported by successive carriers, and when delivered to the consignee the box was found to have been opened, and a part of the goods taken out. *Held*, that the presumption was that the loss occurred through the fault of the last carrier. 1871. *Laughlin v. The Chicago & Northwestern R. R. Co.* (28 Wis. 204), IX, 493.

Liability of carriers for loss beyond line — See II, *note*, p. 141.

7. Connecting lines.

67. Connecting lines — contracts between — liability of. A contract between two connecting lines of common carriers, which provides, among other things, that the gross receipts for transportation on the through line should be divided in a certain proportion between the two corporations, but that "loss or damage occasioned by injuries to person or property on said line shall be borne by the party having possession of the same at the time the injuries were done," gives a person who delivers goods to one corporation, to be transported to a point on the route of the other corporation, no right of action against the first corporation for the loss of the goods while in the possession of the second. 1868. *Burroughs v. Norwich, etc., R. R. Co.* (100 Mass. 26), I, 78.

68. Connecting carriers. Where there is a continuous line of different carriers, united by an agreement under which they carry goods through the connected line for one price, which they divide among themselves in proportions fixed in their agreement, if one of the carriers receives goods to be transported on the continuous line, marked for any place on it, and receives pay for transportation through, such carrier is *prima facie* bound to carry the goods, or see that they are carried, to the place of destination, and is liable for any accidental loss happening on any part of the connected line. 1869. *Nashua Lock Co. v. Worcester & Nashua E. R. Co.* (48 N. H. 339), II, 242.

69. — The defendant, a railroad company, whose road extended from Cincinnati to Dayton, was engaged in shipping goods from Cincinnati to New York, under an agreement with other companies, whose roads extended from Dayton to New York, for rates of through freight to be fixed by the receiving company, and collected by the delivering company, and divided *pro rata* among them. The defendant received goods at Cincinnati consigned to New York, and gave a bill of lading therefor, stating therein that the goods were to be transported by its line to its terminus, and then delivered to the connecting line; it being further agreed, that, in case of loss during transportation, the company alone in whose custody they were at the time of the loss should be held liable. *Held*, that defendant contracted to carry the goods to Dayton only, and was not responsible for loss happening on connecting line. 1869. *Cin. Ham. & Dayton and Dayton & Mich. R. R. Co. v. Pontius* (19 Ohio St. 231), II, 891.

70. Termination of liability — delivery to succeeding carrier. Defendant, a carrier of goods destined to a point beyond its line, had transported them to the end of its route, and given the usual notice to the succeeding carrier, a line

of vessels. The goods were destroyed on the evening following their arrival, and while in defendant's possession. *Held*, that, although the defendant was ready to deliver the goods to the succeeding carrier, yet it was liable as common carrier for a reasonable time, until, according to the usual course of business, a vessel of the succeeding carrier could arrive to take the goods. 1871. *Mills v. The Michigan Central R. R. Co.* (45 N. Y. 622), VI, 152.

71. — Plaintiff delivered to defendant, for transportation, goods marked for a point beyond its line, and received a bill of lading providing that the goods would be forwarded to defendant's terminal station. The goods were so forwarded and were stored in defendant's warehouse, where they were destroyed. In an action to recover their value, *held* (1), that evidence was admissible to show that plaintiff gave direction as to delivering the goods to the succeeding carrier, and that he had been accustomed to give, and the defendant to comply with, similar instructions; (2) that, these facts being proved, the defendant's liability as carrier continued until such delivery to the succeeding carrier; (3) that the action was well brought by the consignor, though title to the goods had passed to the consignee. 1870. *Hooper v. The Chicago and Northwestern Railway Company* (27 Wis. 81), IX, 439.

72. — Plaintiff shipped goods for W., which came into defendants' possession, as intermediate carriers, and were by them carried to the terminus of their route and deposited in that part of their warehouse set apart for freight for W., and whence it was the custom of the succeeding carrier to take without further notice, when ready for delivery. Plaintiff's goods having been accidentally destroyed while so in defendants' warehouse, *held* (1), that if the succeeding carrier had reasonable time to remove the goods after they were ready for delivery and before their destruction, the defendants were not liable; (2) that the question whether or not the succeeding carrier had such reasonable time was for the jury. 1871. *Wood v. Milwaukee and St. Paul Railway Company* (27 Wis. 541), IX, 465.

73. — Plaintiff was the consignee of goods delivered to defendants, common carriers, to be by them transported to the end of their line, and there delivered to a connecting line for transportation to the place of destination. The defendants transported the goods to the end of their line, and placed them in that portion of their warehouse appropriated to goods intended for the connecting line, and from which such line was in the habit of taking goods without any notice or request. Before the removal of the goods by the connecting line, they were destroyed by fire. *Held*, that the liability of the defendants, as common carriers, continued until the goods were actually taken into possession by the connecting line, and that plaintiff could recover. *Wood v. The Milwaukee, etc., Railway Co.*, 27 Wis. 541 (9 Am. Rep. 465), overruled on this point. 1872. *Conkey v. Milwaukee & St. Paul Railway Co.* (81 Wis. 619), XI, 680.

74. *Constructive delivery.* Where flour was brought to Ogdensburg by the Northern Transportation Company, consigned to the plaintiffs at Concord, N. H., and to go over the Northern Railroad, and was deposited in a storehouse under the general control of the transportation company, and, according to the course of business there for six or seven years, a clerk of that company for-

warded to plaintiffs a way-bill marked "duplicate," headed "Northern Railroad Company" and dated at "Ogdensburg depot," but signed by no one, reciting that the railroad company had received of the transportation company the flour in question, and promising to deliver it to the consignees subject to charges as specified; and at the same time sent to the Northern Railroad Company a duplicate of such way-bill, which was entered by them in their books; after which orders and applications respecting the freight were addressed by the consignees to the railroad company, and were acted upon by its agents; and a loss by fire occurred before the flour was removed by the railroad company from Ogdensburg, it was *held*, that defendants, the trustees of the railroad, were liable as common carriers for the loss. 1869. *Barter v. Wheeler* (49 N. H. 9), VI, 434.

75. Through contract. In an action against a railroad company to recover for the loss of a box of goods, it appeared that the box, marked to the plaintiff at Washington, D. C., was delivered to the company at Peoria, Ill., for which a receipt was given, headed "through freight contract," but stipulating that their responsibility should cease at the terminus of their road. Among the conditions attached to the bill of lading was the following: "The responsibility of this company as a common carrier, under this bill of lading * * * to terminate when the goods are unloaded from the cars at the place of delivery." The evidence showed that through freight was never unloaded or delivered at the terminus of the company's road, but forwarded to its place of destination in the cars in which it was received. *Held*, that plaintiff could recover whether the loss occurred on the company's road or beyond the terminus. 1869. *Toledo, P. & W. R. R. Co. v. Merriman* (52 Ill. 123), IV, 590.

76. Contract of first carrier with subsequent carriers. A common carrier having stipulated in its bill of lading or receipt for goods consigned to a point beyond its line, that it shall not be liable for loss by fire nor from loss, unless occurring on its own route, and that the through rate shall be an amount specified therein, may contract with subsequent carriers upon the same conditions by which the consignor will be bound; but the consignor will not be bound by additional stipulations between the several carriers to the effect that in case of loss the value of the goods at the date of shipment shall govern the settlement of the same. Such a contract is not a "through contract." 1871. *Lamb v. The Camden & Amboy R. R. and Transportation Co.* (46 N. Y. 271), VII, 337.

77. Guaranty as to charges—through contract. The P. F. & C. Railway Company received from the plaintiff, at Pittsburg, goods to be transported to Hudson, Wis., guaranteeing on its behalf, and in behalf of the other companies and carriers constituting the entire route, that the through freight should not exceed a certain sum, but expressly restricting its liability as carriers to its own route. The connecting companies, acting independently of each other, and having no knowledge of the guaranty, charged their regular rates, each paying to the previous carrier, according to the established custom, all back charges. The goods were transported to Hudson and delivered to defendant, as warehouseman, by whom the back charges for transportation were paid—the sum exceeding that specified in the guaranty. The plaintiff tendered to defendant the amount due according to the guaranty and demanded the pos-

sion of the goods which was refused. In an action to recover possession, *held*, that the guaranty was not a "through contract;" that each succeeding carrier after the first had a right to charge its usual rates and to pay the usual back charges, and that the defendant had a lien upon the goods for the full amount of the back charges paid by him. 1870. *Schneider v. Boane* (35 Wis. 241), III, 56.

78. — It seems that the remedy of the shipper in such case is against the contracting company upon the guaranty. *Ib.*

79. **When shipper bound by freight tariff.** Where a plaintiff seeks to treat a "freight tariff" between points on two connecting lines, and which provides for the responsibility of "the line" for goods shipped over it, as a contract between himself and the defendants, varying what would otherwise be the legal liability of the latter, he is bound by its provisions, and a declaration in such tariff that "the line" will not be responsible in certain cases is controlling in those cases. 1868. *Burroughs v. Norwich, etc., R. R. Co.* (100 Mass. 26), I, 78.

80. **Liability of intermediate company.** When goods are delivered to a transportation company to be transported over its route, and over several railroads to the place of their destination, the companies having associated and formed a continuous line, an intermediate company is liable for the loss of goods happening upon its part of the line. 1869. *Barter v. Wheeler* (49 N. H. 9), VI, 484.

81. **Joint liability.** When several distinct corporations associate together and form a continuous line of common carriers, each being empowered to contract for freight and passengers for the whole line, and to receive pay for the same, which is to be divided in prescribed proportions, they are jointly liable for losses or injuries upon any part of the line. *Ib.*

8. *Express Companies.*

82. **Limitation in receipt—liability for negligence.** An express company engaged in carrying goods for hire, but in conveyances owned and managed by others, received goods for transportation and gave a bill of lading conditioned that they should not be held liable for any loss or damage except as forwarders only, nor for perils of navigation or transportation. The goods were lost through the negligence of those in charge of the conveyance. *Held*, that the express company were common carriers and that the condition in the bill of lading did not exempt them from liability for the negligence. 1870. *Christenson v. American Express Co.* (15 Minn. 370), II, 123, and *note*, 129.

83. **Liability beyond line.** Defendant received a package of money from a bank at T., to be transmitted to L., and in their receipt they undertook to "forward to the nearest place of destination reached by this company." By the conditions in the receipt, the company were not to be liable "except as forwarders only, * * * or for any default or negligence of any person or corporation to whom" the package should be delivered, "at any place of the established route run by this company," and such person or corporation was to be taken to be the agent of the consigner. To reach L., the package was carried by three other express companies, but the consignee at L. refused to receive it, and directed it to be returned to T., to which place it was carried by

the same routes. On its arrival there, and return to the bank, it was found that part of the money had been abstracted. In an action by the bank against the express company, the judge charged that the company were bound by the contract to carry the package safely to L., and that the burden of proof was on the company to show how the loss occurred. *Held*, error, and that at most the defendant company were liable as carriers only to the end of their route, and beyond that only as forwarders; also, that the jury should have been instructed that, if the evidence satisfied them that the loss had not occurred on defendant company's route, either in going or returning, but on some other part of the route, and that, in the performance of their duties as forwarders, they had used reasonable diligence in the selection of proper carriers, defendant company were not liable. 1871. *American Express Company v. Second National Bank* (89 Penn. St. 394), VIII, 268.

84. — An express company received at Chicago a package of bank bills marked, according to the receipt, "Bank of Dalton, Georgia, for redemption, which we undertake to forward to Dalton, perils of navigation excepted; and it is hereby expressly agreed that" this company "are not to be held liable for a loss or damage except as forwarders only." The company's line terminated in New York. *Held*, that it was not the company's duty to carry the package to Dalton, present it at the bank for redemption, and receive and return the proceeds, or, if not redeemed, to return the package; but that it was the company's duty simply to carry the package to New York and place it in the hands of a connecting company. 1873. *Reed v. The United States Express Co.* (48 N. Y. 462), VIII, 561.

85. *Limitation in receipt as to value.* The defendants received from plaintiff's agent a package of gold for transportation. The defendants' clerk in charge of the office was informed, at the time, of the contents of the package, and directed to collect for its carriage from the person receiving it. The package was lost while being transported. *Held*, that the defendants were not liable for the full value of the package, and that the fact that the plaintiff's agent accepted a receipt in which it was set forth that the package was an ordinary one, and that the liability of the company therefor in case of loss, should not exceed \$50, did not operate to so limit its liability. 1870. *Kember v. Southern Express Company* (23 La. An. 158), II, 719.

86. — Two bales of cotton were delivered by C to the Southern Express Company to be transported to Selma. The printed receipt given by the agent of the company, specified that the company should not be held liable for any loss or damage unless proved to have occurred "through the fraud or gross negligence of its agents;" that, if no value was stated at the time of the delivery to the company by the shipper, the company should not be responsible in "a sum exceeding \$50," for the loss or damage of "each package," and that the company should not be responsible for the safety of the property after its arrival at its destination. No value was stated by the shipper when the cotton was delivered for transportation, nor was a statement of value requested by the agent of the company. The cotton was carried to its destination, and there delivered to the wrong person, whereby it was lost to the owner. In an action by C to

recover for the loss of the cotton, *held*, that a recovery could be had for the full value of the cotton. 1870. *Southern Express Co. v. Crook* (44 Ala. 468), IV, 140.

87. **Limitation of action in receipt.** The plaintiff delivered a package of money to the defendant, a common carrier, to be transmitted to C. The receipt given for it, by the agent of the defendant, specified that there should be no liability for any loss, unless the claim therefor should be made at the receiving office of the defendant within thirty days after the date of the receipt. In an action for damages for a non-delivery of the package, it appeared that the plaintiff was not informed of the non-delivery until a year had elapsed from the date of the receipt. *Held*, that plaintiff could recover, notwithstanding the limitation in the receipt. 1870. *Southern Express Co. v. Oaperton* (44 Ala. 101), IV, 118.

88. **Loss from fires.** The United States statutes of 1851, chapter 48, exempting the owners and charterers of vessels from responsibility for losses arising from accidental fires, does not apply to expressmen or other common carriers who avail themselves of steamboats and other vessels for the transportation of packages in the fulfillment of contracts under which they assume the common-law liability. 1870. *Hill Manuf. Co v. Boston & Lowell R. R. Co.* (104 Mass. 122), VI, 202.

89. **As collectors.** The plaintiff delivered a note to the agent of the American Express Co., at Brockport, in this State, with directions to take it to San Francisco, where the maker resided, present it for payment, and in case of non-payment, to bring a suit at once and collect it; he supposing at the time, that the line of that company extended to San Francisco. Such line did not extend to San Francisco, but only to New York. At the latter place, the note was delivered to another express company (W., F. & Co.'s), to be forwarded by it to the place of destination. *Held*, that this was not a mere contract to forward, but to carry the note to San Francisco and present for payment, and, if not paid, to have it sued at once. That W., F. & Co.'s Express Company, on receiving the note, became the agent of the American Express Company, and the latter company was liable to the plaintiff for all damages resulting from the negligence of W., F. & Co.'s Express Company, in making collection according to the directions. 1873. *Palmer v. Holland* (51 N. Y. 416), X, 616.

90. **Delivery by.** Carriers by vessels and railways are exempt from the duty of personal delivery; but the exemption does not extend to express companies, although availing themselves of carriage by rail, and such companies are bound to exercise due diligence in finding the consignee, or his place of residence or business. 1871. *Wilbeck v. Holland* (45 N. Y. 18), VI, 23.

91. — Where an express company receives goods directed in a peculiar manner to the care of its agent at a specified place, it will be assumed that the shipper intended to make such agent his own agent for receiving the goods, and the express company is discharged from responsibility in delivering the goods to such agent. 1869. *Fitzsimmons v. Southern Express Co.* (40 Ga. 330), II, 577.

92. — A package addressed to plaintiff, and not to the care of any one, was delivered to the defendant by a railroad company, to be transported to plaintiff.

Defendant delivered it to its agent at the place of destination, to whose care plaintiff's packages were usually directed, and so delivered, who converted it to his own use. *Held*, that the plaintiff could recover in an action against the express company. 1872. *Elu v. American Merchants' Union Express Co.* (29 Wis. 611), IX, 619.

93. *Termination of Liability.* Plaintiff consigned an express package marked "C. O. D." from New York to San Francisco. Defendants, an express company, received it, conveyed it to San Francisco, and on the 17th of March tendered it to the consignee and demanded payment. The consignee said he would receive the package and pay at some other time. The tender of the package and demand of payment were repeated by the company several times until the 16th of April, when the package was destroyed while in defendants' warehouse without their fault. *Held*, that defendants' liability was that of warehousemen only, and that plaintiff could not recover the value of the package. 1871. *Weed v. Barney* (45 N. Y. 344), VI, 96.

94. *Action against, for failure to deliver.* Plaintiff, as agent for W., collected money and forwarded it to W., by defendant's express company. The latter failing to deliver it to W., plaintiff brought this action to recover it. *Held*, that plaintiff having no special interest in the money, could not recover. 1872. *Thompson v. Fargo* (49 N. Y. 188), X, 842.

95. — In an action against an express company for failure to deliver a package evidence as to whether the consignee was well known is admissible, on the question of due diligence. *Witbeck v. Holland* (45 N. Y. 13), VI, 28.

II. CARRIERS OF PASSENGERS.

1. General Principles.

96. *Who are passengers.* A railroad corporation, in consideration of the payment by a person of a certain sum of money, and of his agreement to supply the passengers on the trains with iced water, issued to him a season ticket over their road, and permitted him to sell popped corn on their trains. *Held*, that while traveling under this contract he was a passenger, and not a servant of the corporation. 1871. *Commonwealth v. Vermont & Massachusetts R. R. Co.* (108 Mass. 7), XI, 801, and *note*, 804.

97. — An express company had, by contract with a railroad company, the use of a car in which their agent rode without paying fare. The agent, without the authority of his employers, took the plaintiff with him in the car for the purpose of teaching him the business, and the conductor, supposing plaintiff to be an agent of the express company, suffered him to ride without paying fare. An accident happening, plaintiff was injured. *Held*, that plaintiff was not a passenger, and could not maintain an action against the railroad company. 1871. *Union Pacific Ry. Co. v. Nichols* (8 Kans. 505), XII, 475.

98. *Right to demand extra fare when paid in cars.* By the regulations of defendants, a railroad company, persons taking passage in their cars, at a place where a ticket office was established, without having first procured a ticket, were charged ten cents in addition to the regular fare. The plaintiff, finding the ticket office closed, entered the cars without a ticket, intending to

go to M.; made known to the conductor his destination, and gave him fifty cents, which was the regular fare; the conductor demanded the additional ten cents, which was refused, and the plaintiff was expelled at J., the car fare to which was fifty cents. *Held*, in an action for damages: (1), that the conductor, having accepted and retained the fifty cents, could not afterward eject the plaintiff; (2), that evidence was inadmissible to show the car fare to J.; and, (3), that the company, in order to enforce said regulations, were bound to keep their ticket office open a reasonable time in advance of the departure of the train, to enable passengers to procure their tickets. 1870. *Du Laurans v. The First Division of the St. Paul & Pacific R. R. Co.* (15 Minn. 49), II, 102, and *note*, 106.

99. — By a regulation of the defendant—a railroad company—an additional sum was charged of passengers who had not procured tickets before entering the cars. Plaintiff applied at the ticket office of defendant for a ticket to C., but without fault on his part failed to procure it. On the cars he informed the conductor of his attempt to procure a ticket, and tendered the sum required to purchase a ticket. The conductor demanded an additional sum which the plaintiff refused to pay. The conductor thereupon ejected him from the car. The court charged the jury, that if they found from the evidence that the act of the conductor was done “in the spirit of oppressive malice or wantonness” they might find in addition to compensatory damages such exemplary damages as they deemed just. *Held*, no error; and that a verdict for a thousand dollars would not be set aside as excessive. 1871. *Jeffersonville R. R. Co. v. Rogers* (38 Ind. 116), X, 108.

100. Duty of passenger to show ticket. D. purchased of a railroad company a commutation ticket that entitled him to ride upon their road a certain time upon certain conditions; one of the conditions was, that the ticket should be shown to the conductor on every trip the holder might make, and, in case it should not be shown when requested by the conductor, regular fare for that trip should be paid. On one occasion D. by mistake left his ticket at home, and when it was called for by the conductor, he stated that he had forgotten it and refused to pay the regular fare, whereupon he was ejected from the train at the next station. *Held*, that D. could not recover of the company. 1869. *Downs v. New York & New Haven R. R. Co.* (36 Conn. 287), IV, 77.

101. — Plaintiff furnished a commutation ticket, entitling him to ride over defendant's road, between New York and Westport, for the period of a year, upon certain conditions. One of these conditions was that the ticket should be shown to conductors when requested, or when required by the rules of the company. The rules of the company required commuters to show their tickets to conductors when required. During the term covered by the ticket, while plaintiff was riding over defendant's road between New York and Westport, he was requested by the conductor to show his ticket. The plaintiff had the ticket upon his person, but was unable to find it, and so informed the conductor. The conductor knowing him to be a commuter, demanded of plaintiff his fare for the trip, and, on refusal to pay, ejected him from the car. *Held*, that plaintiff was entitled to a reasonable time to produce his ticket, and that his failure to produce it was not such a breach of contract as to justify defendants in

rescinding it, and that, therefore defendants were liable. 1871. *Maples v. The New York and New Haven R. R. Co.* (88 Conn. 557), IX, 494.

102. Upon the refusal of a passenger, having no ticket, to pay his fare, the conductor may rightfully put him off the train, using no more force than necessary and he is not bound to put him off at some station on the road. 1871. *McClure v. Philadelphia, etc., R. R. Co.* (84 Md. 583), VI, 845.

103. — But where a railroad conductor attempts to seize articles of property in the hands of a passenger for the purpose of enforcing payment of fare, the corporation is liable to an action of assault and battery. 1870. *Ramsden v. Boston & Albany R. R. Co.* (104 Mass. 117), VI, 200.

104. Exemplary damages for acts of agent. In an action against a railroad company to recover damages for being wrongfully ejected from defendants' car by defendants' servant, *held*, that exemplary or punitive damages were allowable. 1869. *Atlantic & Great Western Railway Co. v. Dunn* (19 Ohio St. 163), II, 833.

105. Stopping over. A person who has purchased a through ticket from New York to Baltimore, taken his place in a train, and entered upon his journey, cannot leave the train at a way station on the route, and afterward enter another train and proceed to his original point of destination, without procuring another ticket or paying his fare from the station at which he again enters, the car. 1871. *McClure v. Philadelphia, Wilmington and Baltimore Railroad Company* (84 Md. 583), VI, 845, and *note*, 850.

106. — The presumption is that a railroad ticket agent at a way station has no authority to change or modify contracts between the company and its through passengers. So *held* where a conductor's "check" was pronounced good for another train and day (contrary to the face of the check), by the agent. *Id.*

107. — Plaintiff, on March 11th, purchased a "drover ticket," which stated that it was "good" only in his hand for one seat from P. to L., and "good only until March 16." *Held*, that such ticket gave plaintiff no right to "stop off" without permission, and that in so doing he broke the contract. 1873. *Dietrich v. Penn. R. R. Co.* (71 Penn. St. 483), X, 711, and *note*, 718.

108. Regulations — restriction as to trains. A regulation by a railway company, restricting the holder of a certain class of tickets to special trains, nothing of the kind appearing on the tickets, will not justify the expulsion of the holder of such a ticket from the regular trains, he having taken passage thereon without knowledge of the regulation. 1870. *Maroney v. Old Colony Railway Co.* (106 Mass. 158), VIII, 805.

109. Discrimination as to passengers. A railroad company set apart in its passenger trains a car for the exclusive use of ladies, and gentlemen accompanied by ladies. A colored woman was excluded from the car on account of her color. *Held*, that the company was liable in damages, and that \$300 was not excessive in view of the indignity and delay of the exclusion. 1870. *Chicago & Northwestern Ry. Co. v. Williams* (55 Ill. 185), VIII, 641.

2. *Liability for negligence in carrying.*

109. **Degree of care.** Carriers of passengers by railroad are bound to exercise the highest degree of care and diligence in the conduct of their business, and are responsible for the smallest negligence. 1869. *Taylor v. Grand Trunk Ry. Co.* (48 N. H. 804), II, 229, and *note*, 242.

110. — In an action against a railroad company to recover for injuries sustained by an accident, the court charged the jury that "defendants must use such degree of care as is practicable short of incurring an expense which would render it altogether impossible to conduct the business." *Held*, to be erroneous, as making the ability of the corporation the measure of the care and diligence required. While, as a rule, railroad corporations are not bound to exercise such a degree of care as would render it practically impossible to continue this mode of transportation, yet the standard of care and diligence for a particular railroad cannot be made to depend upon its pecuniary condition. It is bound to provide all the agencies suited to the nature and extent of the business it purposes to do, irrespective of any fluctuation in its revenue. *Id.*

111. **Latent defects.** When a railway car is perfect in appearance, but imperfect from some latent defect, which the utmost skill and care could neither perceive nor provide against, the railway company is not responsible for injuries to a passenger arising from the breaking of an axle of the car while running at a proper speed upon a well-constructed road. 1870. *Meier v. Pennsylvania R. R. Co.* (64 Penn. St. 225), III, 581.

112. — A carrier of passengers, *e. g.*, a railroad company, is not bound to furnish an absolutely vehicle-worthy road. 1871. *McPadden v. New York Central R. R. Co.* (44 N. Y. 478), IV, 705.

113. **The inspection of the boilers, etc., of a vessel employed in the carriage of passengers,** and the certificate of the inspector showing that they answer the requirements of the acts of congress of July 7, 1838, and August 30, 1853, do not *per se* constitute a defense to an action for an injury to a passenger. The acts of congress do not impair the common-law right of action by persons thus injured through the unskillfulness or negligence of the owner or master of a vessel. 1872. *Swarthout v. New Jersey Steamboat Co.* (48 N. Y. 209) VIII, 541.

114. **Passenger projecting arm from window.** The plaintiff, while traveling in defendants' railroad car, permitted his arm to rest on the window-sill and slightly project outside, whereby his arm was broken by coming in contact with a freight car standing near the track. *Held*, that the negligence of the defendants was gross in comparison with the plaintiff's, and that the latter could recover. 1869. *Chicago & Alton R. R. Co. v. Pondrom* (51 Ill. 383), II, 306.

115. **Rights of passenger alighting temporarily.** A passenger on a railway who purchases a ticket for a distant station and gets off the train temporarily and without objection or notice, while it is stopping at an intermediate station, does no illegal act, but for the time he surrenders his place and rights as a passenger, but he may return and resume his place and rights as a passenger

on the train before it starts, and the officers of the railway are bound to give reasonable notice of the starting of the train. 1870. *State v. Grand Trunk Ry.* (58 Me. 176), IV, 258.

116. Injury to passengers in alighting — running by platform. Defendant's train of cars, a freight and passenger train, on which plaintiff was a passenger, having reached the station at which plaintiff was to alight, passed several hundred yards beyond the depot, stopping at an unusual place where it was low and icy. Plaintiff demanded of the conductor that the train should be backed, which was refused. In attempting to alight plaintiff dislocated his knee. The jury found negligence in defendant and a verdict for plaintiff. *Held*, on appeal, that defendant had no ground for exception. 1870. *Memphis & Charleston R. R. Co. v. Whitfield* (44 Miss. 466), VII, 699, and *note*, 706.

117. — Railroad companies must afford reasonable time to passengers, whether young or old, to leave the cars in safety, and if the time-tables do not allow sufficient time for this purpose and an injury is thereby occasioned, they will be liable therefor. 1870. *Toledo, etc. R. R. Co. v. Baddley* (54 Ill. 19), V, 71.

118. — Plaintiff purchased a ticket at L, on defendant's railroad, for A, and got upon a freight train, while it was moving slowly. The conductor took the ticket; the train did not stop at A, and plaintiff in getting off was injured. *Held* (1), that if plaintiff left the train voluntarily, although at the suggestion of the conductor, it was a question for the jury whether he acted as a prudent man, under the circumstances; (2) that, as the train was a freight train, and not advertised to stop at A, the taking up of the ticket did not imply an undertaking on the part of the company to put plaintiff off safely at that place. 1870. *Chicago and Alton R. R. Co. v. Randolph* (58 Ill. 510), V, 60.

119. — Plaintiff's intestate was killed in alighting from defendant's railway train, while moving at the rate of from two to four miles per hour. It appeared that the conductor went with the intestate, who was a passenger, out on the platform, to assist him to alight. *Held*, that "if the intestate, without any direction from the conductor, voluntarily incurred danger by jumping off the train while in motion, the plaintiff was not entitled to recover; but if the motion of the train was so slow that the danger of jumping off would not be apparent to a reasonable person, and the intestate acted under the instructions of the conductor, then the resulting injury was not caused by contributory negligence or want of care." 1872. *Lambeth v. North Carolina R. R. Co.* (86 N. C. 494), VIII, 508.

120. — Plaintiff paid his fare on defendant's road to N where the conductor agreed to let him off. The train did not stop at N, but only slackened speed. The plaintiff was afraid to get off. After the station was passed the conductor again slackened speed and directed plaintiff to get off. He did so and was injured. *Held*, that these facts did not constitute negligence on the part of the plaintiff, and that the verdict of the jury awarding damages to plaintiff must be sustained. 1872. *Georgia Ry. Co. v. McCurdy* (45 Ga. 288), XII, 577.

121. — In an action against a railroad company to recover for the death of a passenger, it appeared that the train, upon which the deceased was traveling,

having stopped at a station, remained a reasonable time for passengers to alight, but he, not availing himself of the opportunity, waited until the train began to move, when, in attempting to leave the cars, he was fatally injured. *Held*, that the company was not liable, there being no proof of mismanagement of the train or careless conduct of the employees. 1870. *Ill. Cent. R. R. Co. v. Statton* (54 Ill. 188), V, 109.

122. *Injury to passenger on freight train.* A passenger was riding in the saloon-car of a freight train, contrary to the rules of the railroad company, but the conductor made no objection, and collected fare of him for a first-class passage. *Held*, that he could recover for injuries received from the negligence of the railroad company. 1870. *Dunn v. Grand Trunk Railway* (58 Me. 187), IV, 267.

123. *Condition in season-ticket.* A person was killed while riding on defendant's road, on a season-ticket containing this condition: "The corporation assumes no liability for any personal injury received while in a train to any season-ticket holder." *Held*, that this condition did not relieve the defendant from their legal liability, on an indictment under a penal statute, for gross negligence. 1871. *Commonwealth v. Vermont, etc., R. R. Co.* (108 Mass. 7) XI, 301.

124. *Condition in free pass.* The death of a passenger was caused by the negligence of the servants of a railroad company while he was riding on the railroad upon a free pass indorsed with the agreement that, in consideration of its receipt by the passenger, he assumed all risk of accident and injury to himself and property, whether arising from the negligence of the agents of the company or otherwise, and that the company should not be liable under any circumstances, and, in an action by the representatives of the deceased, *held*, that the contract was valid and that no recovery could be had against the company. 1869. *Kinney v. Central R. R. Co.* (34 N. J. 518), III, 265.

125. *Lex loci contractus.* A passenger riding on the Erie railway, a railroad corporation created by the laws of New York, upon a ticket entitling him to a passage between two stations, both situate in New York, was injured in consequence of an accident on a portion of the railway which runs through Pennsylvania. *Held*, that the contract of carriage was made with reference to the laws of New York, and that a statute of Pennsylvania, limiting the amount of recovery in similar cases, had no effect upon the damages recoverable in this case. 1871. *Dyke v. Erie Railway Co.* (45 N. Y. 118), VI, 43.

126. — A contract between a carrier and a passenger, exempting the carrier from liability for injuries to the passenger, made and to be wholly executed in New York, and valid under the laws of that state, was upheld in Ohio, though it would have been void if made in the latter state. 1869. *Knowlton v. Erie Railway Co.* (19 Ohio St. 260), II, 395.

127. *In an action against a carrier for injuries sustained by a passenger, an instruction allowing the jury, in estimating damages, to consider the "character" of the plaintiff, or his "pain of mind," aside and distinct from his bodily suffering, is error.* 1870. *Johnson v. Wells, Fargo & Co.* (6 Nev. 224), III, 245.

128. In an action against a railroad company to recover for injuries sustained by a passenger, *held* (1), that evidence of the attending physician was admissible as to what effect the injuries would have upon the future condition of plaintiff, and as to how the injuries had affected his mind, although there was no declaration that the injuries had been willful; (2), that the phrase "extraordinary care," in the charge to the jury, was equivalent to "greatest care," "utmost care," the "highest degree of care," that being the degree of care legally required in his case. 1870. *T. W. & W. R. R. Co. v. Baddeley* (54 Ill. 19), V, 71.

129. — When a railroad company is prosecuted in the form of an indictment, under a statute, for causing death, the same principles of law and rules of evidence are applicable, as in civil actions for damages resulting in a similar manner. 1870. *State v. Grand Trunk Ry. Co.* (58 Me. 176), IV, 258.

130. — In an action against a railroad company for injuries received by a car getting off the track, the fact that the car left the track is *prima facie* evidence of negligence. 1872. *Feital v. Middlesex R. R. Co.* (109 Mass. 398), XII, 720.

131. **Exemplary damages.** In an action against a railroad company to recover for injuries sustained by an accident, the court charged the jury that if they found that the injury was caused by the gross negligence of the defendant, they might, in their discretion, give exemplary damages. *Held*, correct. *Taylor v. Grand Trunk Ry. Co.* (48 N. H. 304), II, 229.

132. **Not liable for money carried on passenger's person.** Where plaintiff intrusted a package of money to his agent to carry, and the agent, while a passenger on a railroad was killed, and the money which was carried on the agent's person, without notice to the railroad company, was destroyed by the company's negligence, it was *held*, that the company was not liable for the loss of the money, either on the ground of its duty as common carrier, or by virtue of the maxim, *sic utere tuo, ut alienum non laedas*. 1870. *First Nat. Bank v. Marietta, etc., R. R. Co.* (20 Ohio St. 259), V, 655.

3. *Passengers' Baggage.*

133. **For what passenger may recover.** The right of a traveler to recover of a carrier for lost baggage is not limited to such apparel or other articles as he expects to need or use by the way, but extends to such baggage as is ordinarily carried by passengers. 1870. *Dexter v. The Syracuse, etc., Railroad Co.* (42 N. Y. 326), I, 527.

134. — The plaintiff purchased in New York, and checked over defendants, road, as baggage, a trunk and contents, consisting of wearing apparel for himself and wife, articles for members of his family, and cloth for some dresses, including one for his landlady. The trunk was lost, and in an action to recover the value of it and contents, *held*, that defendants were liable, except for the cloth purchased for landlady. *Id.*

135. **An opera glass may be included in the articles of baggage for which a common carrier is liable.** 1870. *Toledo, Wabash, etc., R. R. v. Hammond* (83 Ind. 379), V, 221.

136. A feather bed, not intended for use on the voyage, is not "personal baggage" of a female passenger by steamship from Ireland to the United States. 1870. *Connolly v. Warren* (106 Mass. 146), VIII, 300, and note, 302.

137. A gold watch, deposited in a trunk by a traveler on a railroad, is baggage, for the loss of which the carrier is liable. 1871. *American Contract Co. v. Cross* (8 Bush. [Ky.] 472), VIII, 871.

138. Money on person. A common carrier of passengers is not liable for the negligent destruction of money kept in the custody of the passenger and carried by him, without notice to the carrier, for a purpose unconnected with the expenses of the journey. 1870. *First National Bank of Greenfield v. Marietta, etc., R. R. Co.* (20 Ohio St. 259), V, 655.

139. Checks for baggage are not of the character of bills of lading, and like instruments, and persons receiving them, are not presumed to know that they contain the terms upon which the property is carried. 1870. *Blossom v. Dodd* (48 N. Y. 264), III, 701.

140. A railroad passenger is not bound by a printed notice in his ticket limiting the weight and value of his baggage, unless his attention is called to the notice, by the ticket agent, or unless he is aware of it when the ticket is purchased, in which case he will be presumed to have assented to the terms of the notice, in the absence of any objection on his part. 1872. *Rauson v. The Pennsylvania Railroad Co.* (48 N. Y. 212), VIII, 548.

141. Baggage checked through — Liability for loss. Where a person purchases a through ticket over several railroads, and procures a corresponding check for his baggage, and the baggage is afterward lost, the company on whose road it is lost is responsible therefor; but the evidence must show that it came to the hands of the company charged with the loss, and that it was lost by them. 1869. *Chicago & Rock Island Railroad Co. v. Fahey* (52 Ill. 81), IV, 587.

142. The liability of a railroad company as a carrier for the baggage of a passenger terminates upon the expiration of such reasonable time, after arriving at the place of destination, as will enable the passenger to receive and take charge of his baggage. 1869. *Mote v. Chicago, etc., Railroad Co.* (27 Iowa, 22), I, 212.

143. — When the baggage is unclaimed within the proper time, it is the duty of the carrier to store it in a proper and secure place until called for, and, when so stored, the carrier becomes liable therefor as a warehouseman, and his liability as carrier ceases. *Id.*

144. — In an action against a railroad company for the loss of baggage, it appeared that the baggage had arrived at its destination and been placed in the depot by the company, where it was stolen by burglars during the night. Held, that the baggage "should have been stored in a safe and secure warehouse to exonerate the company" from liability as a common carrier. 1870. *Bartholomew v. St. Louis, Jacksonville & Chicago Railroad Co.* (53 Ill. 227), V, 45.

145. — Plaintiff purchased a ticket at a point on the New York Central

Railroad for New York and received a check for his trunk accordingly. On the second day after his arrival in New York, plaintiff presented his check at the Hudson River Railroad depot and demanded his trunk, which could not be found. *Held*, that the New York Central Railroad was liable on its contract of carriage for the proper storage of the trunk, although its liability as insurer had been changed by the delay in calling for the trunk to that of bailee. 1871. *Burnell v. The New York Central Railroad Co.* (45 N. Y. 184), VI, 61.

146. — Where baggage is carried past its destination by a railroad company, stored at the wrong station, stolen, and thereby lost to the owner, the company will be liable as common carrier. 1870. *Toledo, Wabash & Western R. R. Co. v. Hammond* (38 Ind. 879), V, 221, and *note*, 224.

147. **Liability for baggage received for transportation.** The plaintiff was a passenger on defendant's road, but had lost her trunk while traveling over a connecting road. A few days after, a conductor on the connecting road found the trunk and left it in charge of the defendants' baggage master, stating the facts, and requesting him to forward it to plaintiff, which he agreed to do. Nothing was said about freight, nor whether the trunk should go by the freight or passenger train. The trunk being lost, *held*, that the defendants were liable for its value. 1869. *Wilson v. Grand Trunk Railway* (57 Maine, 188), II, 26.

148. **A common carrier by water is exempted from liability for the loss of baggage by fire occurring without his design or neglect, under the act of congress of March 3, 1851, entitled "An act to limit the liability of ship-owners and for other purposes," such baggage being "goods and merchandise" within the meaning of the act.** 1871. *Chamberlain v. The Western Trans. Co.* (44 N. Y. 305), IV, 681.

4. *Drover's ticket.*

149. **Conditions in against liability.** The plaintiff made a contract with the defendant for the transportation of stock at a certain rate, wherein it was stipulated that the person riding free to take charge of the stock should do so at his own risk of personal injury, from whatever cause. At the same time, without additional consideration, the defendants gave him a "drover's pass," entitling him to go with the stock and return by a passenger train. On the pass was an indorsement stipulating that "the person accepting this free ticket assumes all risks of accidents, and expressly agrees that the company shall not be liable under any circumstances, whether of negligence by their agents, or otherwise, for injuries to the person," nor as common carriers. The plaintiff received the pass with knowledge of its contents, accompanied the stock, and was injured on his return by the negligence of defendants' servants. *Held*, that the plaintiff was not a gratuitous passenger, and that the contract and stipulation against liability for negligence was against the policy of the law and void, and therefore, no defense to an action for the injury. 1869. *The Cleveland, Painesville, etc. R. R. Co. v. Curran* (19 Ohio St. 1), II, 362.

150. — Plaintiff shipped cattle by defendant's railroad under an agreement which provided that plaintiff should go in the same train with the cattle; that he should be carried free of charge, and that he should take all of the risks of

personal injury from whatever cause, whether of negligence of defendant, its agents or otherwise. Plaintiff received a drover's pass which provided that its acceptance should be considered "a waiver of all claims against the company for personal injury received when on the above train." After the cattle were loaded, and as plaintiff was about to get aboard the train, he was injured by the negligence of defendant's servant. *Held*, that the defendant was not liable for the injury. 1872. *Poucher v. N. Y. O. R. R. Co.* (49 N. Y. 268), X, 864; see contra *Lockwood v. N. Y. Cent. R. R. Co.* (U. S. S. C.) id. 866, *note*.

III. CARRIER OF CATTLE.

151. *Nature of liability.* Railroad companies, in the absence of statutory requirement or of special contract, are not liable as *common carriers* in the transportation of animals. 1870. *The Mich. Southern & Northern Ind. R. R. Co. v. McDonough* (21 Mich. 165), IV, 466.

152. — Action on the case against a railroad company, as common carriers, for refusing to carry and for delay in carrying live stock. *Held* (1), that carriers of live stock are not ordinarily common carriers; (2) that the burden of proof was upon the plaintiff that defendant had assumed to convey the stock as common carriers, or that they possessed the character of common carriers of live stock. 1872. *Lake Shore & Michigan Southern R. R. Co. v. Perkins* (25 Mich. 329), XII, 275.

153. — A railroad company, receiving cattle or live stock to be transported over its road from one place to another, assumes all the responsibility of common carriers, except so far as such responsibility may be modified by special contract. 1872. *Kansas Pacific Ry. Co. v. Nichols* (9 Kans. 285), XII, 494, and *note*, 500.

154. A special contract for the transportation of live stock provided that the carrier, a railroad company, should be released from "any and all claims which may or might arise for damages or injury to said stock while in the cars of said company, or for delay in its carriage, or for escape thereof from the cars, and generally from all claims relating thereto, except such as may arise from the gross negligence or default of the agents or officers of the said company acting in the discharge of their several official duties." In an action for damages to the stock occasioned during transportation, *held*, (1) that the effect of the contract was to impose on the plaintiff the burden of proving, not merely that the live stock was injured and damaged by accident and delay occurring in the transportation, but also that these were caused by the gross negligence of the defendant's agents; and, (2) that proof that some of the stock were injured and lost by accidents on the railroad while in the course of transportation, that considerable delays occurred in carrying the cattle, and that they were damaged and lessened in weight and value from this cause, did not raise the presumption of negligence or default on the part of the agent of the railroad company within the meaning of the contract. 1870. *Bankard v. Baltimore & Ohio R. R. Co.* (34 Md. 197), VI, 831.

155. — Defendant received from plaintiff five car loads of cattle to be transported from Erie to Buffalo, under a written agreement whereby plaintiff

assumed all risk of injuries from "delays or in consequence of heat, suffocation or the ill effects of being crowded upon the cars," the plaintiff also agreed to load and unload said cattle at his own risk, the defendant furnishing the necessary assistance. The cattle were in charge of plaintiff's agent. The train was detained *in transitu* three days by a snow storm. The cattle could have been unloaded by constructing a temporary platform, which plaintiff's agent requested defendant to do. Defendant refused. The cattle remained in the cars and some of them died. *Held*, that defendants were not liable. 1872. *Penn. v. Buffalo & Erie R. R. Co.* (49 N. Y. 204), X, 355.

156. — The defendant agreed to transport a lot of hogs for the plaintiffs, from Buffalo to Albany, and the plaintiffs, in consideration of a reduced rate of freight, assumed and agreed to take the risk of all injuries to the hogs, in consequence of heat, etc. A portion of the animals having died from the effects of heat, the result of negligence in the defendant's agents, *held*, that under the special contract, the defendant was not liable for the value of the hogs thus lost. 1872. *Cragin v. N. Y. C. R. R. Co.* (51 N. Y. 61), X, 559.

CASHIER—*See* BANKS AND BANKING.

CEMETERY.

The purchaser of a lot in a cemetery for "burial purposes" does not take any title to the soil; and an act of the legislature, directing the vacation and sale of the cemetery and the removal of the bodies, is not an unconstitutional infringement of his rights. 1871. *Kincaid's Appeal* (86 Penn. St. 411), V, 377.

See HIGHWAY.

CERTIORARI.

Certiorari to bring up for review the proceedings of assessors of taxes in valuing and assessing property. *Held*, that the court was not limited to jurisdictional questions only, but had power to inquire into the determination of the assessors and to correct errors committed by them. 1872. *Milwaukee Iron Co. v. Schubel* (20 Wis. 444), IX, 591.

CERTIFICATE OF DEPOSIT—*See* BANKS AND BANKING.

CERTIFICATES OF STOCK—*See* STOCK CERTIFICATES.

CHAMPERTY.

1. Champerty is an offense against the law whether regard be had to the ancient common law, the English statutes upon the subject, or to the legislative acts of Rhode Island, and, therefore, avoids every contract into which it enters. 1866. *Martin v. Clarke* (8 R. I. 389), V, 586.

2. A contract between an attorney and counselor at law and a client, that the attorney shall prosecute a claim at his own cost and charge, for a part of the subject in litigation, is champertous, illegal and void. *Id.*

See ATTORNEY.

CHATTEL MORTGAGE — *See* MORTGAGES.

CHARTER — *See* CORPORATION; MUNICIPAL CORPORATION.

CHECK.

Days of grace are not allowed on a check payable at a future day named. 1863. *Champion v. Gordon* (70 Penn. St. 474), X, 681.

See BANKS AND BANKING.

CHILD — *See* PARENT AND CHILD.

CHURCH — *See* ECCLESIASTICAL LAW; MUNICIPAL CORPORATIONS.

CIVIL RIGHTS.

A statute providing that colored people shall have equal privileges with white people in theaters, held constitutional. 1873. *Donnell v. State* (48 Miss. 661), XII, 375.

CIVIL RIGHTS BILL — *See* CONFLICT OF LAWS.

CITIZENSHIP — *See* ELECTION.

COLLISION — *See* SHIPS AND SHIPPING.

COLORED PERSON — *See* CARRIER; CIVIL RIGHTS; SCHOOLS.

COMMERCIAL AGENCY — *See* SLANDER AND LIBEL.

COMMERCE AMONG THE STATES — *See* CONSTITUTIONAL LAW.

COMMISSION.

Majority may act. A statute appropriated a specified sum to be paid to the relator for the purchase of certain relics of Gen. Washington, by the State, to be paid only upon the certificate of three persons named therein, that the relics were genuine, etc. *Held*, that a certificate signed by two of the persons named, which stated that the third met with them, but refused to join in the certificate, was sufficient. 1873. *People v. Nichols* (52 N. Y. 478), XI, 734.

When real estate broker entitled to — *See* BROKER.

COMMISSION MERCHANTS — *See* AGENT.

COMPROMISE.

1. Consideration. The compromise of a doubtful and conflicting claim is a good consideration for a new agreement. 1869. *Pitkin v. Noyes* (48 N. H. 294), II, 318.

2. — There is no consideration in contemplation of law for a promise by a creditor that a sum less than the debt shall be received in satisfaction, and

such a promise will not release a surety. 1869. *Oberndorf v. Union Bank of Baltimore* (31 Md. 126), I, 31.

3. — An agreement by a creditor to accept, in satisfaction and discharge of a liquidated debt, a sum less than the full amount due, provided that no other creditor shall receive more than a like per cent on his claim, is void. 1868. *Perkins v. Lockwood* (100 Mass. 249), I, 103.

4. — Defendants being unable to pay an undisputed liability of \$6,400, which they had incurred by breach of a contract with plaintiff, it was agreed that if defendants would borrow of their friends and pay \$3,500, and agree to pay an additional sum as soon as they were able, up to seventy-five cents on the dollar, plaintiff would compromise his claim. Defendants borrowed and paid the \$3,500, mainly in checks of their friends. *Held*, that this did not preclude plaintiff from suing for the residue of the claim, there being no consideration for the compromise. 1873. *Bunge v. Koop* (48 N. Y. 225), VIII, 546.

CONCEALED WEAPONS.

An act of the legislature provided "that it shall not be lawful for any person to publicly or privately carry a dirk, sword-cane, Spanish stiletto, belt or pocket pistol or revolver." *Held*, constitutional, with the exception of the prohibition as to the "revolver." 1871. *Andrews v. State* (3 Heisk, Tenn. 165), VIII, 8, and *note*, 23.

CONDITIONAL SALE — *See* SALE; STOPPAGE IN TRANSITU.

CONFEDERACY.

1. **Government de facto.** The Confederate States government was a *de facto* government so far as relates to its own citizens and adherents, and all consummated transactions under it between such citizens, not in conflict with the constitution and laws of the United States, will not be disturbed by the courts. 1868. *Cassell v. Backrack* (42 Miss. 56), II, 590.

2. **Not de facto.** The plaintiff, in payment of a tax, levied by the State on his cotton, in 1866, tendered to the sheriff a "cotton note," issued under an act of the confederate legislature of 1861, and made receivable in payment of all present or future taxes. The sheriff refusing to receive the note, plaintiff brought suit for an injunction to restrain the sale and compel acceptance. *Held*, that the Confederate States government being neither a *de jure* nor *de facto* government, its acts were not binding on a succeeding lawful government; and that the notes in question, being issued in aid of the rebellion, were void, and, therefore, not receivable. 1869. *Thomas v. Taylor* (42 Miss. 651), II, 625.

3. **Confederate money — consideration.** In an action on a note given in Louisiana for a loan of Confederate money, *held*, that the courts of Mississippi would not enforce the contract, since the courts of Louisiana had declared all contracts, the consideration of which was Confederate money, illegal and void. 1869. *Ivey v. Lalland* (42 Miss. 444), II, 606.

4. — A trust deed contained a power to sell real estate in payment of a note made in 1863, in consideration of "Confederate treasury notes," and

renewed in 1865. *Held*, that neither the deed nor the note was void. 1870. *Sherfy v. Argenbright*, (1 Heiskell, 128), II, 690.

5. — Confederate treasury notes held not to be a good consideration for a promissory note made between residents of the south during the civil war. 1870. *Hale v. Huston* (44 Ala. 184), IV, 124; *Lawson v. Miller* (44 Ala. 616), IV, 147.

6. — One who receives payment of a note in Confederate money cannot afterward recover the amount of the note although the money received was illegal and worthless. 1869. *Ritchie v. Sweet* (83 Tex. 838), V, 245.

7. — In an action on a promissory note, it appearing that the agreement was to pay in Confederate money, though not so expressed upon the face of the instrument, *held* that no recovery could be had. 1869. *Donley v. Tindall* (83 Tex. 48), V, 284.

8. — A note given since the war to city officers for a tax assessed during the existence of a Confederate government, by a city subject to that government, is void for want of consideration. 1870. *O'Byrne v. Mayor*, (41 Ga. 881), V, 582.

9. — Where a person was, before the late civil war, the *bona fide* holder of two bonds of the State, which had been issued ten years before, for purposes of internal improvements, and which were then due and payable, and, in 1862, received from the State in payment thereof treasury notes to the amount of the bonds, which expressed on their face that they were fundable in the bonds of the State, thereafter to be delivered, and the bonds had never been delivered; *held*, that the claim was founded upon an illegal consideration, and the State was not bound to pay it. 1871. *Rand v. State of North Carolina* (65 N. C. 194), VI, 741.

10. — *Judicial sale.* On vacating a sale of lands of a testator made under order and decree of the so-called court of probate of the late Confederate government of Alabama, if such sale has been made for Confederate treasury notes of the so-called "Confederate States of America," the purchaser should be charged with the value of the use and occupation of the land during his possession, and allowed credit for the value of Confederate treasury notes at the date of the purchase, if the sale was for cash, and if said notes were of benefit to the testator's estate or his heirs, and for the value of all necessary repairs and improvements by him made on said land. 1871. *Moseley v. Tut-till* (45 Ala. 621), VI, 710.

11. *An agent of the Confederate government drew a negotiable order on the war department, and it was indorsed to plaintiff for value. Held, illegal.* 1872. *Oronly v. Hall* (67 N. C. 9), XII, 597.

12. *Tax sales.* B. sued C. for taking and carrying away two bales of cotton. C. had purchased the cotton in 1864, at a regular tax sale made by a collector of taxes for the Confederate States government for taxes due that government from B. Both parties were residents in, and adherents to, the Confederate States during the war. *Held*, that B. could not recover 1868. *Cassell v. Backrack* (42 Miss. 56), II, 590.

13. **Service of a summons** issued from a Confederate court, during the rebellion, is not binding upon the party to appear, and a judgment entered thereon is void. 1871. *Thompson v. Mankin* (36 Ark. 586), VII, 628.

CONFLICT OF LAWS.

1. **Penalty.** An action to recover a penalty imposed by statute will not lie outside of the State which enacted the law. 1870. *First National Bank v. Price* (83 Md. 487), III, 204.

2. **Marriages between whites and blacks.** By a law of Indiana, intermarriage between white persons and negroes is made a felony. Upon a prosecution for violation of this law, *held*, that the regulation of the marriage contract is under the control of the State governments, and that the statute in question was not abrogated by the act of congress known as the civil rights bill, or by the fourteenth amendment of the Federal constitution. 1871. *State v. Gibson* (36 Ind. 389), X, 42.

3. **Married women.** Action on a promissory note of a married woman, living in Mississippi, executed in Louisiana, where, for local reasons, the contract was valid and enforceable. *Held*, that the action could not be maintained in Mississippi, where a married woman was not personally liable on her contracts. 1872. *Bank v. Williams* (46 Miss. 618), XII, 319.

4. **Insolvent's assignment—vessel at sea.** By an order of the insolvent court of Massachusetts, the property of an insolvent resident of that State was assigned to duly appointed assignees. The property so assigned consisted in part of a vessel which was then at sea in the Pacific ocean, but which, on its arrival at the port of New York, was seized by a New York creditor of the insolvent, by virtue of an attachment issued by a New York court, subsequent to the assignment in solvency. *Held*, that the lien of the attachment was valid against the claims of the assignees in insolvency. 1871. *Kelly v. Crago* (45 N. Y. 86), VI, 35. (Reversed, U. S. Sup. Ct. 16 Wall. 610.)

See CARRIER; CONSTITUTIONAL LAW; CONTRACT; JUDGMENTS.

CONSIDERATION.

1. **The compromise of a doubtful and conflicting claim is a good consideration for a new agreement.** 1869. *Pitkin v. Noyes* (48 N. H. 294), II, 218.

2. **Confederate money.** Confederate treasury notes were not a valid consideration for a promissory note made between parties residing in the south during the civil war. 1870. *Hale v. Huston* (44 Ala. 134), IV, 124; *Lawson v. Miller* (44 id. 616), id. 147.

3. — A promissory note which was by parol agreement to be paid in Confederate money, *held* void. 1869. *Donley v. Tindall* (32 Tex. 43), V, 234.

4. **The confidence induced by undertaking a service for another is a sufficient consideration to create a duty in the performance of it.** 1871. *Hammond v. Hussey* (51 N. H. 40), XII, 41.

5. Where the note or bill of a married woman is void when made, there is no consideration for a promise by her after her husband's death to pay the same. 1872. *Porterfield v. Butler* (47 Miss. 165), XII, 329.

See BILLS AND NOTES.

CONSIDERATION FOR AGREEMENTS — See CONTRACTS.

CONSIDERATION FOR A PROMISE — See PROMISE.

CONSIGNER AND CONSIGNEE.

The consigner of goods has a right of action against a carrier for their loss although title to the goods has passed to the consignee. 1870. *Hooper v. Chicago, etc., Ry. Co.* (27 Wis. 81), IX, 439. See, however, *Krudler v. Ellison* (47 N. Y. 36), VII, 402; *Thompson v. Fargo* (49 N. Y. 188), X, 342.

CONSPIRACY.

1. Action for — proof — damages. In an action on the case, grounded on an alleged conspiracy by the defendants to injure the plaintiff, he cannot recover unless there is evidence that he sustained actual damage. The fact of conspiracy is simply matter of aggravation, and should be proved in order to entitle the plaintiff to recover in one action against several. 1871. *Kimball v. Harman* (34 Md. 407), VI, 340.

2. — In an action on the case, alleging that the defendants combined and conspired together to defeat the right of plaintiff to receive and possess a certain lot of bedsteads which he had purchased of one of the defendants, he is not entitled to recover damages against such defendant for breach of the contract of sale. *Id.*

3. A conspiracy to obtain from a master mechanic money, which he is under no legal obligation to pay, by inducing his workmen to leave him, and by deterring others from entering into his employment, or by threatening to do this, so that he is induced to pay the money demanded, under a reasonable apprehension that he cannot carry on his business without yielding to the demand, is an illegal conspiracy; and the money thus obtained may be recovered back from the conspiring parties, who are, also, liable for all damages to the business of such mechanic occasioned by such illegal acts. 1870. *Carew v. Rutherford* (106 Mass. 1), VIII, 287.

CONSTITUTIONAL CONVENTION.

A constitutional convention has no power to grant by ordinance, or otherwise, new trials. 1873. *Lawson v. Jeffries* (47 Miss. 686), XII, 342.

CONSTITUTIONAL LAW.

I. UNITED STATES CONSTITUTION.

II. STATE CONSTITUTIONS.

1. *General principles.*
2. *Laws impairing obligations of contracts.*
3. *Vested rights.*
4. *Taking private property for public use.*
5. *Eminent domain.*
6. *Taxation.*
7. *Municipal aid to railroads.*
8. *Jury trial and due process of law.*
9. *Police power.*
10. *Offices and power to vacate.*
11. *Miscellaneous cases.*

I. UNITED STATES CONSTITUTION.

1. **Regulation of commerce — interstate traffic.** By an act passed in 1868, it was provided that no person, not being a permanent resident of this State, shall sell, etc., within the limits of Baltimore, any goods, etc., other than agricultural products and articles manufactured in the State of Maryland, etc., either by card, sample or list, without first obtaining a license so to do. The rate of license is \$300. *Held*, that such license is a tax upon a particular branch of business carried on in a particular mode within the limits of the State by a particular class of persons, and not a tax upon goods or merchandise imported into the State, either from foreign countries or from other States. 1869. *Ward v. State* (31 Md. 279), 1, 50. (Reversed, U. S. Sup. Ct., 12 Wall. 418.)

2. — Such a tax is not repugnant to that clause of the eighth section of article one of the United States constitution, which grants congress the power to regulate commerce through the several States. *Id.*

3. — Such tax is not repugnant to the clause of the second section of article four of the United States constitution, which declares that the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States. *Id.*

4. **Tonnage tax.** A tax levied upon railroads and transportation companies within the State, generally at certain rates per ton upon all goods carried by them, and making no discrimination as to the source or destination of such goods, is not in conflict with the federal constitution. Therefore where the State of Pennsylvania imposed, by act of April 30, 1864, a tax of from two to five cents per ton upon all the freight traffic of all railroad, canal, etc., companies doing business in the State. *Held*, that the act was a lawful exercise of State power over creations and uses brought into existence by her own authority and a proper tax upon the franchises granted by her. 1869. *Commonwealth v. Erie Ry. Co.* (62 Penn. St. 286), 1, 399. (Reversed, U. S. Sup. Ct., 15 Wall. 232; see *id.* 284.)

5. — Such a tax, although the amount is determined by the number of tons carried, is not a tonnage tax. The tonnage of the federal constitution is

one of capacity not of weight. Nor does it attempt to regulate commerce between the different States; nor does it impose a duty upon imports and exports. The purpose of such a tax being to raise revenue, and not to regulate transportation, the right to impose it arises from the power to raise revenue, and not from a power to control commerce. *Id.*

6. — A State law must act directly as a regulation of commerce before it will be pronounced unconstitutional. *Id.*

7. Requiring bond in behalf of immigrants. The legislature passed an act requiring the master of any vessel arriving at the port of San Francisco, from any port out of the State, to make a report of the condition, occupation, etc., of every person or passenger not being a citizen of the United States. The act also required the owner or consignee of the vessel to give a bond for each passenger included in such report, conditioned to indemnify each and every town, county or city against all costs and expenses incurred for the relief or support of the persons named in the bond, within two years from the date of the bond. In an action brought against defendants to recover a forfeiture for a failure to give said bonds, the complaint alleged, among other things, that defendants' steamship brought four passengers, not citizens of the United States; that the master had duly made his report thereof, but that the defendants had refused, after due request, to give the bonds as required by statute. The answer alleged that the said four passengers were persons in the prime of life, sound in body and mind, and neither paupers, vagabonds nor criminals. On demurrer to the answer, *held*, that so much of the act as required a bond for persons sound in body and mind, and neither paupers nor criminals, was in violation of the constitution of the United States and void. 1872. *State v. Steamship "Constitution"* (42 Cal. 578), X, 303.

8. Regulations as to navigable rivers. By a series of enactments, the legislature of Pennsylvania prohibited the floating of saw-logs in the Susquehanna river, between the town of Northumberland and the Maryland State line, "without the same being rafted and joined together or inclosed in boats, and under the control, supervision and pilotage of men especially placed in charge of the same, and actually thereon," under penalty of forfeiture. *Held*, that these enactments were a valid exercise of the police power and the right of eminent domain and not repugnant to the federal power "to regulate commerce with foreign nations and among the several States," nor a violation of a contract created by legislation between Maryland and Pennsylvania, to the effect that the Susquehanna should be a public highway to the Maryland line. 1870. *Craig v. Kline* (65 Penn. St. 899), III, 636.

9. Bridges over navigable rivers. A State legislature has the constitutional right to authorize the construction of bridges over the navigable rivers of the State, provided such bridges do not materially injure navigation. 1869. *Chicago v. McGinn* (51 Ill. 266), II, 295.

10. Evidence in State courts. An act of a State legislature, providing that "no * * * Chinese shall be permitted to give evidence in favor of, or against, any white man," is not in conflict with the fourteenth amendment of the United States constitution. 1870. *People v. Brady*, (40 Cal. 198), VI, 604.

11. — The State legislatures have the power to regulate the competency of witnesses and the production of evidence in State courts, notwithstanding the fourteenth amendment of the constitution of the United States. *Id.*

12. **Removal of cause.** The act of congress of March 2, 1867, in so far as it gives a non-resident plaintiff the right to remove a cause from the State to the federal courts, is unconstitutional. (DIXON, C. J., dissenting.) 1870. *Whiton v. Chicago and Northwestern Ry. Co.* (35 Wis. 424), III, 101. (Reversed, U. S. Sup. Ct., 13 Wall. 270.)

13. **Taxation of bank shares.** By the the statute of June, 1868, chapter 349, of Massachusetts, entitled, "An act concerning the taxing of bank shares," it was provided that the shares in national banks, owned by non-residents of the commonwealth, shall be assessed to the owners thereof in the cities or towns where the banks are located; that the rate of taxation shall be the same as on other moneyed capital; that the value of such shares shall be omitted from the valuation upon which the rate is to be based, and that the act shall "apply to taxes assessed and collected for the present year in the same manner and to the same effect as if it had been in force on the first day of May." *Held*, that the act was not unconstitutional, either as being in violation of the act of congress of 1864, chapter 106, section 47, and 1868, chapter 7, or as levying a tax in a disproportional manner, or as being retrospective in its operation. 1869. *Providence Institution v. Boston* (101 Mass. 575), III, 407.

14. **The Nevada stamp act**, requiring revenue stamps upon bills of exchange, drawn in that State and payable in another State, is a valid exercise of the taxing power, and is not in conflict with the United States constitution. 1871. *Ex parte Martin* (7 Nev. 140), VIII, 707.

15. **Slave contracts.** Plaintiff, on a judicial sale had in October, 1863, became security for the purchase price of a lot of slaves sold thereat. *Held*, that his bond was valid and its payment obligatory, notwithstanding the emancipation proclamation made before, and that it could be enforced after the adoption of the thirteenth amendment to the United States constitution. 1872. *Henderlite v. Thurman* (22 Gratt. Va. 466), XII, 526.

II. STATE CONSTITUTION.

1. General principles.

16. **Special legislation — discretion of legislature.** Where the constitution provides that the legislature "shall pass no special law for any cause for which provision can be made by a general law," the legislature is the sole judge as to whether provision by a general law is possible. 1872. *State v. County Court of Boone County* (50 Mo. 317), XI, 415.

17. **Title of act.** The legislature passed an act, entitled "An act to authorize the city of Madison to re-assess and collect certain taxes and assessments," and authorizing a special re-assessment, for the payment of a patent pavement already laid in the city, and also the adoption and use of any patented pavement in the future, and the assessment and collection of taxes therefor. *Held*, that the act did not "embrace more than one subject," and that the sub-

ject was sufficiently "expressed in the title" within the meaning of the provisions of the constitution. 1872. *Mills v. Charleton* (29 Wis. 400), IX, 578.

18. **Return of bills to legislature by governor — mandamus to governor.** Under a section of the constitution requiring all bills passed by the legislature to be presented to the governor for his approval, to be returned with his objections in case of non-approval; and providing, "that if any bill shall not be returned by the governor within ten days after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature, by adjournment, prevent such return," the governor sent to the legislature a bill not approved, with his objections, on the tenth day, and before the usual hour for adjournment. The legislature had, however, adjourned to the day following, and the messenger returned the bill to the governor who retained it thereafter. *Held* (1), that the governor had not returned the bill within the meaning of the constitution; (2), that the legislature had not by adjournment, prevented such return, the adjournment not being final; (3), that the court had jurisdiction to compel the governor, by mandamus, to cause the bill to be authenticated as a statute. 1870. *Harpending v. Haight* (89 Cal. 189), II, 432.

19. **Rule of construction.** Courts of justice are authorized to declare a legislative act unconstitutional and void only when it violates the constitution, clearly, palpably, plainly, and in such manner as to leave no reasonable doubt. 1869. *Stewart v. Supervisors of Polk County* (80 Iowa, 9), I, 238. *Commonwealth v. Erie Ry. Co.* (62 Penn. St. 286), I, 399.

20. — An act of the legislature may be unconstitutional in two ways; first, because it assumes or seeks to confer power not legislative in its nature; second, because it violates some specific provision of the national or state constitution. 1869. *Hanson v. Vernon*, (27 Iowa, 28), I, 215.

21. **Acts judicial in character.** The legislature has no authority to pass a law in which it exercises judicial powers, by determining the rights of parties. *State v. Tappan* (29 Wis. 664), IX, 622.

22. — An act of the legislature authorized the Court of Appeals to reopen and rehear certain enumerated cases which had been previously decided by the court, and upon the hearing thereof, to pass such judgments, orders and decrees in the said cases as right and justice might require. On a motion to reinstate said cases, *held*, that the act was unconstitutional as an attempt on the part of the legislature to exercise judicial power. 1872. *Dorsey v. Dorsey* (87 Md. 64), XI, 528.

23. — A constitutional convention passed an ordinance granting new trials in certain cases. *Held*, that the ordinance was not a legislative act, and was void. 1873. *Lawson v. Jeffries* (47 Miss. 686), XII, 342.

24. **Exemption from general laws.** A special statute of Maine authorizing the supreme judicial court of that State, in its discretion, to decree a divorce between parties named, which, under the general law, the court had no power to do, is unconstitutional as granting a special indulgence by

way of exemption from the general law. 1870. *Simonds v. Simonds* (103 Mass. 572), IV, 576.

25. — The charter of a city provided that no costs should be recovered against the city in any action brought to set aside a tax assessment, or to prevent the collection of taxes. *Held*, unconstitutional, being an attempt to exempt a particular corporation from the operation of general laws. 1871. *Durkee v. The City of Janesville* (38 Wis. 464), IX, 500.

2. Laws impairing obligations of contracts.

26. Statute exempting from taxation. The legislature passed an act exempting from taxation all property used for the purpose of manufacturing salt, and offering a bounty of ten cents a bushel for salt manufactured in the State. Two years later the said act was amended, by limiting the exemption from taxation to five years. The five years having elapsed, the complainant, a corporation for the manufacture of salt, organized after the passage of the original act, filed a bill to restrain the collection of a tax upon their property, on the ground that the exemption from taxation was in the nature of a contract between the State and the parties acting under it, and therefore protected by the United States constitution. *Held*, that the act was not in the nature of a contract, and could be amended or repealed at any time. 1869. *East Saginaw Manufacturing Company v. City of East Saginaw* (19 Mich. 259), II, 82.

27. — An act declaring that all estates granted for any religious, educational or charitable uses shall forever remain to such uses, and shall also be exempt from the payment of rates, is not a contract between the State and the grantor or grantees; and a subsequent act, taxing such of those estates as have been leased or conveyed in such a manner as to yield no longer an annual income for such use, is valid. 1869. *Lord v. Town of Litchfield* (36 Conn. 116), IV, 41.

28. A tax duly assessed, is not a debt within the clause of the constitution, prohibiting the passage of a law impairing the obligations of a contract. 1869. *City of Augusta v. North* (57 Me. 392), II, 55.

29. Homestead exemption. The constitution and laws of a State exempted homesteads from executions for debts "heretofore or hereafter contracted." *Held*, void, in so far as they apply to contracts entered into, or debt contracted, before their passage, as in violation of the constitution of the United States. 1872. *Homestead Cases* (22 Gratt. [Va.] 266), XII, 507.

30. — The homestead laws of North Carolina, being restrictions on former exemptions, do not impair the obligation of contracts, and are not unconstitutional as to prior contracted debts. 1878. *Garrett v. Cheshire* (69 N. C. 896), XII, 647.

31. Charter to conduct lotteries. A corporation was created by the legislature, with a franchise to conduct lottery schemes, upon condition that the corporators should pay into the State treasury a sum certain, and enter into certain bonds. An offer to pay the money into the treasury was made; but, at that time no bonds were presented for approval, and the offer was not accepted.

Lottery schemes were, subsequently, prohibited by the revised constitution of the State and by the legislature. *Held*, that the corporators, upon the presentation of the bonds and retender of the money, were not entitled to the enjoyment of their franchise. 1870. *Mississippi Society of Arts and Sciences v. Musgrove* (44 Miss. 830), VII, 723.

32. — A statute incorporated a company to carry on the lottery business in the State for twenty-five years, the company paying the State a certain sum for the privilege. The amended constitution of the State, afterward adopted, prohibited lotteries. *Held*, that this was not impairing the obligations of a contract within the provision of the constitution of the United States. 1873. *Moore v. State* (48 Miss. 147), XII, 367.

33. *Railroad.* A statute requiring a railroad corporation, whose charter is subject to amendment, alteration or repeal at the pleasure of the legislature, to establish a flag-station at a certain point on its line, and to erect there a station house, at which at least two trains each way shall stop each day, is not in violation of the constitution of the United States as impairing the obligations of a contract. 1869. *Commonwealth v. Eastern R. R. Co.* (103 Mass. 254), IV, 555.

34. *Fishways in private dams.* By a general law of Massachusetts, it was declared that every act of incorporation thereafter passed should, "at all times, be subject to amendment, alteration or repeal, at the pleasure of the legislature." Subsequently, a water-power company obtained a charter, with the privilege of erecting a dam across the Connecticut river, upon payment of damages to fish owners. The dam was accordingly erected, and several years afterward the legislature passed an act compelling the owners of the dam to make and maintain a suitable fishway. *Held*, that this act was constitutional, there being no express provision in the charter allowing the company to maintain a dam without a fishway. 1870. *Commissioners on Inland Fisheries v. Holyoke Water-power Co.* (104 Mass. 446), VI, 247. (Affirmed, U. S. Sup. Ct., 15 Wall. 500.)

35. *Providing that debts shall bear interest.* An act providing that "debts due on open accounts and other demands not heretofore bearing interest by law, shall bear interest," etc., is unconstitutional and void, so far as it related to debts contracted before the passage of the act. 1868. *Goggans v. Turnipseed* (1 S. C., N. S. 80), VII, 23.

36. *Acts done under military authority.* A sheriff paid the surplus of a sale on execution, to another than the person entitled thereto, by order of the military authorities in Missouri. In an action on the sheriff's bond, *held*, that the section of the State constitution, providing that no person should be prosecuted for any act done in pursuance of military authority, was void, as impairing the obligation of contracts, in so far as it applied to acts done in violation of the sheriff's bond. 1871. *State v. Gatsweiler* (49 Mo. 17), VIII, 119.

37. *Consideration of contracts — ordinance avoiding contracts.* Section 1 of ordinance No. 88, adopted by the State convention of 1867, and declaring that "all contracts for the sale of land which are incomplete by reason of

the purchase-money being unpaid, or the title deeds and conveyances being unexecuted, and which sale took place between the 11th day of January, 1861, and the 9th day of May, 1865, unless paid for, or contracted to be paid for, in the legal currency of the United States or property other than slaves, are hereby declared null and void at the option of the parties, or either of them," impairs the obligation of contracts, and is therefore unconstitutional and void. 1870. *Roach v. Gunter* (44 Ala. 209), IV, 182.

3. Vested rights.

38. **Statute of limitation.** After a cause of action has become barred by the statute of limitation, a defendant has a vested right to rely upon that statute as a defense, and neither a constitutional convention nor the legislature has power to divest the right, and revive the right to maintain the action. 1870. *Girdner v. Stephens* (1 Helsk, 280), II, 700.

39. A statute of West Virginia declared that the period from April 17, 1861, to February 27, 1866, should not be counted in computing time under any statute of limitation. *Held*, constitutional. 1870. *Caperton v. Martin* (4 W. Va. 188), VI, 270.

40. **Tax deed.** An act of the legislature, declaring a tax deed conclusive evidence that all of the essential requirements of the law regulating the exercise of the taxing power were complied with, is unconstitutional. 1870. *McCreedy v. Sexton* (29 Iowa, 856), IV, 214.

41. **Test oath.** An act of the legislature of West Virginia prohibiting a party against whom a judgment has been recovered as an absent defendant from appearing in court and opening the judgment unless he would take a prescribed oath, in effect purging himself from all complicity with the rebellion, is constitutional. 1870. *Peerce v. Carakadon* (4 W. Va. 234), VI, 261. (Reversed, U. S. Sup. Ct., 16 Wall. 234.)

4. Taking private property for public use.

42. **Compensation.** A legislative authority to do an act which will naturally result in damages to private property must be coupled with provisions for ascertaining and paying such damages, in order to protect persons acting under such authority from liability at common law. 1869. *Lee v. Pembroke Iron Co.* (57 Me. 481), II, 69.

43. **"Taking of property"—resulting injury.** Where a railroad company, in constructing its road, cut through a ridge adjoining plaintiff's land, and as a result thereof such land was flooded, *held*, that this was a "taking of property" within the meaning of the constitution, and that the legislature could not authorize it without providing for compensation. 1871. *Eaton v. Boston, etc., R. R. Co.* (51 N. H. 504), XII, 147.

44. **Fishway in dam.** A railway company, to which the absolute sale of a State dam on a navigable river was made, held a charter from the State, in which there was no power of change or revocation reserved. Subsequently the legislature passed an act requiring every individual or corporation, having or maintaining any dam on the river, to construct and maintain a sluice, or

other device, for the free passage of fish. The railroad company assigned its interest in the dam to a canal company formed after the passage of the fish act. On an indictment against the canal company for a failure to comply with the act, *held*, that the power to cause the changes to be made in the dam was within the right of eminent domain; but that the act was unconstitutional, in so far as it imposed the burden of expenses of the changes upon the canal company, because it authorized the "taking of private property for public use without compensation." 1870. *Commonwealth v. Pennsylvania Canal Co.* (66 Penn. 41), V, 839.

45. **Taking private bridge.** An act of the legislature authorizing county commissioners to lay out a bridge, owned by private individuals, as a highway, and to apportion between the county and the towns benefited the damages to be paid therefor, is a constitutional exercise of the right of eminent domain. 1869. *Haverhill Bridge Proprietors v. County Commissioners* (103 Mass. 120), IV, 518.

46. — The payment of such damages need not precede the seizure, but the means for securing indemnity need be such that the owner will be put to no risk or unreasonable delay. *Ib.*

47. **Telegraph lines.** An act of the legislature authorized telegraph companies to construct their lines upon the right of way of the railroad companies of the State, and provided for an arbitration to assess damages therefor in case of disagreement, but made no provision for enforcing the award. *Held*, unconstitutional. 1872. *Southwestern R. R. Co. v. Southern & Atlantic, etc., Telegraph Co.* (46 Ga. 49), XII, 585.

48. **Ground rents.** An act of the legislature providing for the extinction of irredeemable ground rents by compelling the rent-owner, at the option of the land-owner, to receive a gross sum and release the rents, is unconstitutional. 1871. *Palaisot's Appeal* (67 Penn. St. 479), V, 450.

5. Eminent domain.

49. **For private enterprise.** A grist-mill owned and operated by individuals who are compelled, by law, to grind well all grain received by them for that purpose, but are not compelled by law to receive grain for grinding, is not a "public" benefit in the constitutional sense; and an act of the legislature authorizing the flowage of lands (on payment of assessed damages), by maintaining a dam of sufficient height to run such mill, is an unconstitutional exercise of the right of eminent domain. 1872. *Tyler v. Beacher* (44 Vt. 648), VIII, 396.

50. **Light-house.** The right of eminent domain in a State exists only for its own purposes; therefore an act of the legislature of a State authorizing the condemnation, by State commissioners, of lands to be turned over to the United States for purposes of a light-house, is unconstitutional and void. 1871. *People v. Humphrey* (28 Mich. 471), IX, 94, and *note*, 103.

51. **Site for post-office.** A State legislature may delegate the right of eminent domain to an agent of the United States for the purpose of obtaining

land in such State as a site for a post-office. 1871. *Burt v. Merchants' Insurance Co.* (106 Mass. 856), VIII, 889.

52. — By an act of the legislature of Massachusetts, an agent of the United States was authorized to purchase land in the State for the site of a post-office. The act provided that, when the agent and the owners of the land could not agree upon the price, there should be an appraisement made by a jury. *Held*, that in order to obtain the land and the appraisement, it was not necessary that the owner should first *consent* to a sale. *Id.*

53. *Private roads.* The legislature cannot authorize the taking of private property for a private road without the owner's consent, even if compensation be made therefor. 1869. *Osborn v. Hart* (24 Wis. 89), I, 161.

6. *Taxation.*

54. *For purposes not municipal.* An act of the legislature compelling the taxation of a town, to pay for a bounty to a volunteer, and the expenses of unsuccessful suits to recover the same, is not for a municipal purpose, and void. 1872. *State v. Tappan* (29 Wis. 664), IX, 622.

55. — The legislature cannot constitutionally authorize a town to loan its credit to persons who will, in consideration thereof, maintain a manufacturing enterprise in the town for their own private emolument. 1872. *Allen v. Inhabitants of Jay* (60 Mo. 124), XI, 185.

56. *On gross earnings.* By a convention ordinance of Missouri, it was provided that an annual tax of ten and fifteen per cent of the gross earnings of the North Missouri R. R. Co., should be paid to the State in lieu of other taxation, and applied in payment of the debt due from the State, on the bonds issued to the company by the State. *Held*, not unconstitutional, either as in violation of articles 5 and 7 of the amendments to the United States constitution (for these articles are only restrictive of federal power), or as impairing the obligation of contracts. Such an ordinance is a valid exercise of the taxing power. 1872. *North Missouri R. R. Co. v. Maguire* (49 Mo. 490), VIII, 141.

7. *Municipal aid to railroads.*

57. *Power of legislature to authorize.* A statute authorizing municipal corporations to aid in the construction of railroads, and to levy a tax therefor, *held*, unconstitutional and void. 1869. *Hanson v. Vernon* (27 Iowa, 28), I, 215.

58. — But the same court in a subsequent case, on a similar statute, overruled *Hanson v. Vernon*, and *held*, such a statute constitutional. 1869. *Stewart v. Supervisors of Polk Co.* (30 Iowa, 9), I, 238.

59. — Taxation in aid of railroads owned and operated by private individuals or corporations is unconstitutional, and an act of the legislature authorizing county orders to be issued in aid of a railroad, and taxes to be levied for the payment thereof, on condition that the consent of the majority of the people should be manifested by ballot, and the railroad should be brought to a specified state of completion, is void. 1869. *Whiting v. The Sheboygan & Fond du Lac R. R. Co.* (25 Wis. 167), III, 30.

60. — An act of the legislature authorizing municipal aid to railroads, by taxation, is unconstitutional. 1870. *People v. Town of Salem* (30 Mich. 453), IV, 400.

61. — A State legislature has the constitutional power to authorize counties and municipal corporations to subscribe for stock in railroad companies and to issue bonds in payment therefor. 1871. *Commissioners of Leavenworth v. Miller* (7 Kans. 479), XII, 425.

62. — An act of the legislature authorizing a city to raise, by taxation of its citizens, the money for constructing a railroad leading into such city, from points within or without the State, when the railroad is deemed by a majority of the citizens to be essential to the interests of the city, is not unconstitutional. 1871. *Walker v. City of Cincinnati* (31 Ohio St. 14), VIII, 24.

63. Restriction on State. A State constitution provided that "the State shall never be a party in carrying on any work of internal improvement." *Held*, not to be a restriction on municipal corporations. 1871. *Commissioners of Leavenworth v. Miller* (7 Kans. 479), XII, 425.

8. *Jury trial and due process of law.*

64. Commitment to reform school. A statute authorizing the grand jury, where an infant under the age of sixteen years is charged with crime, and the charge appears to be supported by evidence sufficient to put the accused upon trial, instead of finding an indictment, to return to the court that the accused is a suitable person to be committed to the house of refuge, and directing the court thereupon to order the commitment without trial by jury, is constitutional. 1869. *Prescott v. The State* (19 Ohio St. 184), II, 888.

65. — An act of the legislature of Illinois authorized the commitment to a "reform school" of children between six and sixteen years of age who are "vagrants or destitute of proper parental care, or are growing up in mendicancy, idleness or vice," to remain until reformed or until the age of twenty-one. On the application of the father of a child so committed, *held*, that the child must be discharged, the act being unconstitutional, and the commitment not being for any criminal offense. 1870. *People v. Turner* (55 Ill. 280), VIII, 645.

66. Due process of law. A constitutional provision that no person shall be held to answer for a criminal offense "unless upon presentment or indictment of a grand jury," was amended by substituting the words "without due process of law." *Held*, that the statute subsequently passed giving courts jurisdiction to try prosecutions for felonies upon information, was not in contravention either of the constitution as amended or of the fourteenth amendment of the constitution of the United States. 1873. *Rowan v. State* (30 Wis. 129), XI, 559.

67. Jury fee. A statute requiring the party demanding a jury to pay the jury fee, and tax the same in his costs, if he prevail, is constitutional. 1873. *Randall v. Kehler* (60 Me. 87), XI, 169.

68. Act compensating owners of sheep killed by dogs. A statute provided that any person suffering loss by reason of the maiming, killing or

worrying of his sheep by dogs, may present proof of the nature and extent of his damages to the selectmen of the town, who shall draw an order for the amount in his favor upon the treasurer of the town, and thereupon the town may recover of the owner of the dog the full amount of such order. *Held*, to be unconstitutional, in so far as it undertook to bind the owner of the dog by the decision of the selectmen fixing the amount of the damage without giving him an opportunity to be heard on the question; but that the town could nevertheless recover, under the statute, from the owner of the dog, the actual damages which the jury who try the cause find the owner of the sheep to have suffered, not exceeding the amount of the order drawn by the selectmen. 1868. *East Kingston v. Towle* (48 N. H. 57), II, 174.

9. Police power.

69. — When necessary to insure the public safety, the legislature may, under the power vested in it, authorize municipal authorities to summarily destroy property without legal process or previous notice to the owner. 1868. *Blair v. Forehand* (100 Mass. 186), I, 94.

70. — Thus the regulation of the keeping of dogs and the authorization of their summary destruction when prescribed regulations are not complied with are within the police power. *Ib.*

71. Fences along railroads. A railroad company was not compelled by its charter to make or rebuild fences along its track. By an act of the legislature it was made the duty of the company to repair fences along its line, "destroyed by fire caused by the running of trains or by the employees of the road." *Held*, a valid exercise of the police power of the State. 1871. *Pennsylvania R. R. Co. v. Riblet* (66 Penn St. 164), V, 860.

72. Cemeteries. A statute directing the removal of bodies from a cemetery and the vacation and sale thereof is constitutional. 1871. *Kincaid's Appeal* (66 Penn. St. 411), V, 877.

73. A statute prohibited the use, in cities and towns of a certain size, of any building not then so in use, for carrying on the "business of slaughtering cattle, sheep, or other animals, or for melting or rendering establishments, or for other noxious and offensive trades or occupations," without the permission of the mayor, etc. *Held*, a constitutional exercise of the police power of the legislature. 1872. *Inhabitants of Watertown v. Mayo* (109 Mass. 315), XII, 694.

10. Offices and power to vacate.

74. Legislative power as to constitutional offices. The Pennsylvania legislature established the twenty-ninth judicial district, by act of 28th February, 1868, under which act J. G. was elected and commissioned president judge of the district. By an act passed March 16, 1869, the former act was repealed and the district was abolished. *Held*, that the act of 1869 was invalid, as being an attempt, substantially, to abolish the office of president judge of the twenty-ninth district. (1), The term of the judicial office is fixed by the constitution, and it is beyond the power of the legislature to diminish it. 1869. *Commonwealth v. Gamble* (63 Penn. St. 348), I, 422.

75. — The powers, authority and jurisdiction of an office are inseparable from it. The legislature may diminish the aggregate amount of duties of a judge, by the division of his district, or otherwise, but must leave the authority and jurisdiction pertaining to the office intact. *Ib.*

76. **Transferring duties.** When one of the duties appertaining to the office of sheriff was the collection of taxes, and during the plaintiff's term as such sheriff the legislature passed an act for the appointment of tax-collector: *held*, that such act was unconstitutional. 1871. *King v. Hunter* (65 N. C. 608), VI, 754.

77. — Where a State constitution provides for the election of sheriffs, fixes the term of office, etc., but does not define what powers, rights and duties shall attach or belong to the office, the legislature has no power to take from a sheriff a part of the duties and functions usually appertaining to the office, and transfer it to an officer appointed in a different manner and holding the office by a different tenure. 1870. *State v. Brunst* (26 Wis. 412), VII, 84, and *note*, 87.

78. **Where an office is created** entirely by the act of the legislature, the legislature may, in the absence of any constitutional restriction upon its power in the special case, shorten the term or abolish the office altogether, as it may think the public interests require. 1870. *State v. Douglass* (26 Wis. 428), VII, 87, and *note*, 90.

79. **Extending term.** The constitution of the State provided that certain officers should be elected at such times and in such manner as the legislature should direct. The legislature directed the times and manner of the election and the defendant was elected thereunder. Subsequent to such election, an act was passed extending the term of the incumbent three years. *Held*, that such act was unconstitutional. 1871. *People v. Bull* (46 N. Y. 57), VII, 302.

80. **Office created by Confederate legislature.** An inferior court was established by an act of the legislature of an insurgent State during the rebellion; after the suppression of the rebellion a judge was elected for six years, and his election was ratified by the legislature. The legislature afterward, and before the expiration of the six years, abolished the court. *Held*, that the act was never a valid law, that the legislature had the constitutional right to abolish the court, and that thereafter the judge had no claim to the salary. 1871. *Perkins v. Corbin* (45 Ala. 108), VI, 698.

81. **Municipal officers.** The legislature has no power to appoint permanent officers for the full term whose duties are purely municipal. 1871. *People v. Hulbut* (24 Mich. 44), IX, 108.

82. **Removals by the governor.** By the constitution of Mississippi, article 12, section 6, it was provided that "the term of office of all county, township and precinct officers shall expire within thirty days after this constitution shall have been ratified, and the governor shall, by and with the advice and consent of the senate, thereafter appoint such officers, whose term of office shall continue until the legislature shall provide by law for an election of said officers." *Held*, that an act of the legislature providing that; in all cases in which the governor "shall have the power under this act, by the terms of the constitu-

tion, to appoint to office he shall also have the power of *removal* from office," was not unconstitutional. 1870. *Newsom v. Cooke* (44 Miss. 352), VII, 686.

Miscellaneous cases.

83. **Local improvements.** The charter of a city authorized the city council to cause the improvements of streets at the cost of the owners of the adjoining lots, and provided that after the first improvement, repairs were to be made at the expense of the city; *held*, not to be a contract, and that a subsequent charter authorizing the re-construction of such streets, at the cost of adjacent owners, was constitutional. 1870. *Bradley v. McAtee* (7 Bush. Ky. 667), III, 309.

84. — An act of the assembly authorizing a street already laid out and in good condition, to be taken and improved for a public drive or carriage-way, and providing that the expense of the improvements be assessed upon the property located on the street, is unconstitutional, as imposing local assessments for improvements, which are for the general public benefit. (READ and WILLIAMS, *dissentients*.) 1870. *Hammett v. Philadelphia* (65 Penn. St. 146), III, 615.

85. — The collection of an assessment for a local improvement was perpetually enjoined, on the ground that the assessment was made without authority of law, and an act of the legislature was subsequently passed authorizing a special re-assessment for the same purpose. *Held*, that the act was valid. 1872. *Mills v. Charleton* (29 Wis. 400), IX, 578.

86. **State laws giving a lien on vessels for labor performed and materials furnished in their construction** are constitutional, and may be enforced in State courts. 1868. *Foster v. The "Busted"* (100 Mass. 409), I, 125.

87. — A State statute, a portion of whose provisions give a lien upon vessels and furnish a means of enforcing it in cases of contracts not maritime, and as to which there is no admiralty jurisdiction, will be upheld even though such statute is unconstitutional and void in relation to particular cases covered by its terms. 1870. *Shppard v. Steele* (43 N. Y. 53), III, 660.

88. — The plaintiff performed blacksmith work on a vessel being built at a ship yard in this State. *Held*, that the New York statute, entitled "An act to provide for the collection of demands against ships and vessels," passed April 14, 1862, was not in conflict with the United States constitution or the judiciary act, so far as it applied to a lien claimed by plaintiff. *Id.*

89. — The plaintiffs attached a sea-going vessel, under the New York law (chap. 482, Laws of 1863), upon a claim for wharfage. *Held*, that a demand for wharfage being a maritime demand, cognizable in the courts of admiralty, a State statute attempting to confer a remedy for such a demand by proceedings *in rem* is void. 1871. *Brookman v. Hammill* (43 N. Y. 554), III, 731.

90. — Any State law which attempts to provide for the enforcement of a maritime claim or contract by any but a common-law remedy infringes upon the exclusive jurisdiction of the federal courts, and is a clear violation of the federal compact. *Id.*

91. — But in so far as the State laws create lien and provide remedies

for claims not maritime, over which the courts of admiralty have no jurisdiction, they are valid and operative. *Id.*

92. Local option laws. The legislature have no power to make the operation or repeal of a law dependent upon a vote of the people. Therefore, *held*, that an act prohibiting the sale of ale, wine, etc., the operation of which is made dependent upon the vote of the people in each county, was unconstitutional. 1871. *The State v. Weir* (88 Iowa, 184), XI, 115, and *note*, 117.

93. Civil rights. A State statute provided that people of color should have equal privileges and accommodations with white people in public conveyances, theaters, places of popular amusements, etc., and imposed a penalty for a violation of the act. *Held*, that the statute was constitutional, and that the conviction of the lessee of a theater for denying admission and equal accommodations to colored men should be affirmed. 1873. *Donnell v. State* (48 Miss. 661), XII, 875.

94. The legislature may grant to a body corporate the exclusive franchise of manufacturing and selling gas to illuminate a city, and of constructing works and laying pipes for such purpose. 1872. *State v. Milwaukee Gas-light Company* (29 Wis. 454), IX, 598.

95. Election: ballot. The legislature passed an act requiring "the inspectors of any election, on receiving the ballot of any voter, to have the same numbered with figures on the outside or back thereof to correspond with the number placed opposite the name of such voter on the poll list. *Held*, that such act was in violation of the object of that provision of the constitution, which declares that "all elections by the people shall be by ballot," and was, therefore, void. A ballot implies absolute secrecy. 1871. *Williams v. Stein* (88 Ind. 89), X, 97.

96. Elections: registry laws. By the constitution of Iowa, article 2, section 1, it is provided that "every white male citizen of the United States, of the age of twenty-one years, who shall have been a citizen of the State for six months next preceding the election, and of the county in which he claims his vote sixty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law." A registry law providing that "no vote shall be received * * * from any person whose name does not appear on the register unless the person offering to vote shall furnish the judges of election his affidavit," etc., is not incompatible with the above provision of the constitution, and is valid. 1869. *Edmonds v. Banbury* (28 Iowa, 267), IV, 177.

97. Bringing stolen property into State. A statute, providing that a person who shall bring into the State property which he has feloniously stolen in another State, shall be guilty of larceny, and punished accordingly, is constitutional. 1871. *People v. Williams* (24 Mich. 156), IX, 119.

98. Pardons. The constitution forbade the governor to grant a pardon before conviction. *Held*, that a pardon after verdict and before sentence was valid. 1872. *Commonwealth v. Lockwood* (100 Mass. 323), XII, 699.

99. Judicial power. By the constitution of Kansas the jurisdiction of the Supreme Court was restricted to certain original proceedings, and "such appel-

late jurisdiction as may be provided by law." The legislature conferred upon the Supreme Court the power to hear appeals from a board of county clerks in the appraisal of the property of railroads for purpose of taxation. *Held*, that the valuation of property for purposes of taxation is an incident to the taxing power, and, therefore, not such a "judicial power" as can be conferred upon the Supreme Court in the form of appellate jurisdiction. 1870. *Auditor of State v. The Atchison, Topeka and Santa Fe R. R. Co.* (6 Kana. 500), VII, 575.

100. — The legislature of Ohio authorized the judges of the superior court to appoint trustees of a contemplated railway. *Held*, (1) that this was not an exercise of the appointing power, forbidden to the legislature by article 2, section 27 of the State constitution, such trustees not being *public officers* in the constitutional sense, and their appointment by the court being a legitimate function; (2) that the act was not in violation of article 4, section 14 of the State constitution, prohibiting the judges from holding any other office, such power of appointment being only an additional power or duty annexed to an existing office and not a new office; and (3) the act was not in violation of article 2, section 20 of the State constitution, in not fixing the term of office and compensation of the trustees, such trustees not being "officers" in the sense of the constitution. 1871. *Walker v. City of Cincinnati* (21 Ohio St. 14), VIII, 24.

101. "Office or public trust." A statute appropriated a specified sum to be paid to the relator for the purchase of certain relics of General Washington, by the State, to be paid only upon the certificate of three persons named therein, one of whom was at the time a judge of the court of appeals, and as such incapacitated from holding any other "office or public trust." *Held*, that the appointment was valid, it not being an office or public trust within the meaning of the constitution. 1873. *People v. Nichols* (53 N. Y. 478), XI, 784.

See LIMITATION OF ACTION; MUNICIPAL CORPORATIONS; STATUTES; STATUTORY CONSTRUCTION.

CONTEMPT.

Review of judgment. Plaintiff was subpoenaed to make his affidavit before a justice of the peace, but refusing to comply, he was committed by the justice, whereupon a writ of *habeas corpus* was obtained from the Supreme Court. *Held*, that he must remain in custody, although his affidavit could not be used in the proceeding for which it was required, on the ground that when a person is being punished for contempt, unless the proceedings leading thereto are so grossly defective as to render them void, the judgment of commitment, in the absence of statute, cannot be reviewed in any other tribunal. 1870. *Robb v. McDonald* (29 Iowa, 880), IV, 211.

CONTRACTORS.

The owner of a city lot let parts of the work of constructing a building to different persons; to one the excavation; to another the stone work; to

another the superstructure; while himself delivered stone, lime and sand. *Held*, that the owner, and not the contractors, was responsible for an injury to a traveler caused by the excavation being insufficiently guarded. 1871. *Homan v. Stanley* (66 Penn. St. 464), V, 889.

See MASTER AND SERVANT; NEGLIGENCE.

CONTRACTS.

- I. WHAT CONSTITUTES.
- II. THE CONSIDERATION.
- III. CONSTRUCTION AND EFFECT.
- IV. VALIDITY.
- V. PERFORMANCE.
- VI. IN RESTRAINT OF TRADE.
- VII. ACTION ON.

I. WHAT CONSTITUTES.

1. A promise lacking mutuality at its inception becomes binding upon the promisor after performance by the promisee. 1871. *Willots v. Sun Mut. Ins. Co.* (45 N. Y. 45), VI, 81.

2. By letter. Where parties treat by correspondence through the post, an offer by one is complete as soon as the letter containing notice of an acceptance is sent. The party making the offer is bound, when the other party has accepted it before the notice of withdrawal reaches him. A mutual mistake as to a fact wholly collateral, and not affecting the essence of the contract, will not invalidate such contract. 1869. *Wheat v. Cross* (81 Md. 99), I, 28.

3. A statute exempting property from the payment of rates is not a contract and may be repealed, and the property taxed. 1869. *Lord v. Litchfield* (86 Conn. 116), IV, 41; *East Saginaw Manf. Co. v. City of East Saginaw* (19 Mich. 259), II, 82.

4. Subscription paper. In an action against a subscriber to a paper stipulating that the subscribers would pay the sum annexed to their names to any person who should thereafter build a free bridge at a specified place, the same to be paid upon the completion of the bridge, it was *held*, (1) that the instrument was a valid contract between the subscribers thereto and any one who should afterward build the bridge according to its terms; and that as relates to the payee, it was like a note payable to the bearer; (2) that parol evidence was inadmissible to show the work was to be let to the lowest bidder, there being no such provision in the paper. 1870. *Cooper v. McCrimmin* (83 Tex. 383), VII, 268.

5. Services rendered a person during his last illness as nurse and housekeeper are not deemed to be gratuitous, but on the contrary, there is an implied contract that the party receiving such services is to pay a fair compensation therefor. The fact, if it were shown, that the nurse or housekeeper lived with the man she was nursing and taking care of as his concubine, does not impair or lessen her claim for wages, unless it be alleged and shown that concubinage was the motive and cause of their living together in the first instance, and the

services rendered were merely incidental to that mode of living. 1871. *Succession of Poreuilhet* (23 La. An. 294), VIII, 595.

6. — Plaintiff resided with her brother for many years, being supported and cared for by him during that time as a member of his own family, and after his death sued his administrator, for services rendered by her for her brother while she so lived with him. *Held*, that the presumption created by the near kinship of plaintiff and deceased that no payment was intended for such services, could only be overcome by clear and satisfactory proof of an express contract to pay for them. 1871. *Hall v. Finch* (29 Wis. 278), IX, 559.

7. A contract tainted with fraud may be ratified without a new contract, founded on a new consideration. 1871. *Negley v. Lindsay* (67 Penn. St. 217), V, 427.

II. THE CONSIDERATION.

8. The compromise of a doubtful and conflicting claim is a good consideration for a new agreement. 1869. *Pitkin v. Noyes* (48 N. H. 294), II, 218.

9. **Mutuality.** If A promise to pay B a sum of money to do a particular act, and B does the act, A is liable, though B did not at the time of the promise engage to do the act; for, upon the performance of the condition by the promisee, the contract is clothed with a valid consideration, which relates back, and the promise at once becomes obligatory. 1869. *Des Moines Valley R. R. v. Graff* (27 Iowa 99), I, 256.

10. **Contracts under seal: consideration.** Under the statute of Iowa the want of consideration on a contract under seal may be inquired into, and this does not except instruments made in other States. 1869. *Williams v. Haynes* (27 Iowa, 251), I, 268.

11. — This statute affects all sealed contracts made after its passage. It relates to the remedy, and does not impair the obligation of the contract, within the meaning of the adjudications of the United States Supreme Court. *Ib.*

12. **Defense of suit.** Where A defended the suit of B upon C's promise to indemnify him against the costs of the defense, this was a good consideration for the promise, although C was mistaken as to the validity of the defense, and as to the benefit which he should derive therefrom. 1871. *Wells v. Mann* (45 N. Y. 827), VI, 98.

13. Where a tenant agreed with his landlord, who was about to sell the premises at auction, that he would deliver possession of the same upon a fixed day, before the expiration of his term, to such person as should become the purchaser, and, being present at the sale, made a statement to that effect, and the plaintiff became the purchaser, relying upon such agreement of the tenant, who had full knowledge thereof, *held*, that the purchase of the property by the plaintiff was a sufficient legal consideration for the tenant's promise. 1869. *Moore v. Davis* (49 N. H. 45), VI, 460.

14. **Innkeeper's Lien.** Defendant, an innkeeper, held goods of J. S. to satisfy his board bill. Plaintiff, also an innkeeper, was afterward applied to by J. S. for board, and agreed with defendant to board J. S. a certain time in consideration of defendant's promise to retain the goods as security for

plaintiff's bill as well as his own. The goods were released without payment of plaintiff's bill. *Held*, that defendant's promise was founded on good consideration, and that for the violation of it plaintiff was entitled to recover. 1872. *Hartell v. Saunders* (49 Mo. 433), VIII, 136.

Consideration of bills and notes—See BILLS AND NOTES.

III. CONSTRUCTION AND EFFECT.

15. By what law construed. The *lex fori* governs as to the proof of the contract; the *lex loci contractus* as to the obligations of the contract, 1869. *Downer v. Chesebrough* 86 Conn. 89), IV, 29.

16. — An ante-nuptial contract was made in the State of Mississippi by a female minor with her intended husband. The contract was to be carried out in the State of Louisiana, where the husband and wife resided after marriage. *Held*, that the capacity of the parties, as well as the form of the contract, must be governed by the laws of Mississippi, while its effect must be governed by those of Louisiana. 1870. *Succession of Jesse W. Wilder* (22 La. An. 219), II, 731.

17. — To ascertain whether such a contract is for the benefit of the minor so as to determine whether it is void or voidable, the *lex loci contractus* alone must be considered. *Id.*

18. — The courts of Louisiana having declared all contracts the consideration of which was Confederate money, illegal and void. *Held*, that the courts of Mississippi would not enforce a note given in Louisiana for a loan of Confederate money. 1870. *Ivey v. Lalland* (42 Miss. 444), II, 606.

19. — In an action on a promissory note given in Arkansas, the defendant alleged that the action was barred by the statute of limitation of that State; *held*, that the *lex fori* and not the *lex loci contractus* was to govern. 1870. *Carrson v. Hunter* (46 Mo. 467), II, 529.

20. — The plaintiff was injured through negligence of defendant, while traveling on defendant's train in the city of New York, under a contract made and to be executed therein, and valid by the laws thereof, by the terms of which the plaintiff was to be carried gratuitously, and was to assume all risks of injury arising through negligence of defendant's servants or otherwise. *Held*, that the validity of the contract must be determined by the laws of New York, and that, it being valid in that State, the plaintiff could not recover. 1869. *Knoulton v. The Erie Ry. Co.* (19 Ohio St. 260), II, 395. *See CARRIER*, pl. 125.

21. Sale by sample. S. sold and delivered spirituous liquors in New York, where such sale was lawful, to E., who resold the same in New Hampshire, where such sale was unlawful. There was evidence tending to show that prior to such sale S. had, in New Hampshire, solicited orders for liquor from E., and that at the time of the sale he had reasonable cause to believe, and did believe, that E. intended to resell the liquors in New Hampshire, contrary to law. *Held*, that the contract of sale being valid in New York could be enforced in New Hampshire. 1870. *Hill v. Spear* (50 N. H. 253), IX, 205.

22. — If an agent of a person engaged in the sale of liquors in another State, merely takes an order of a person residing in Iowa for a quantity of liquor to be forwarded to him, which order is made upon and subject to the approval or disapproval of his principal, the sale will be regarded as made in the State where the principal resides, and the case will not fall within the statute of Iowa, making void contracts for or on account of intoxicating liquors. 1871. *Tegler v. Shipman* (33 Iowa, 194), XI, 118.

23. — Defendant ordered, by sample, spirituous liquors of the traveling agent of a firm in another State where the sale was lawful, and they were put up, marked to purchaser and shipped from the firm's place of business. *Held*, that the sale was made and the contract complete at the place of shipment, and that an action for the price could be maintained in New Hampshire. 1871. *Boothby v. Plaisted* (51 N. H. 436), XII, 140.

X 24. Independent. In a contract for the sale of land the vendee agreed to pay the purchase-money in installments, and the vendor executed a bond conditioned to deliver the deed upon the payment of the last installment. *Held*, that the agreements were independent and that the vendor could recover the last installment without first tendering the deed. 1869. *Bowen v. Bailey* (42 Miss. 405), II, 601. But see, to the contrary, *Robinson v. Harbour* (42 Miss. 797), II, 671.

25. Severable. An oral promise to pay for both the past and future board of another is severable, and an action will lie on so much of it as is not within the statute of frauds. 1868. *Haynes v. Nice* (100 Mass. 327), I, 109.

26. Particular words. In an action upon a written contract for the sale of hogs, to be "delivered at W., at the option of H., by giving ten days:" notice at any time in June, *held*, that the contract obliged defendant to make the delivery during the month specified, without notice. 1870. *Willmoring, v. McGaughey* (30 Iowa, 205), VI, 678.

27. — An obligation in writing to pay a specified sum of money, on a day certain, in coin, or cotton at twenty cents per pound, at the option of the promisor, becomes absolute to pay coin, unless a tender of the cotton is made when due. A like obligation, when at the option of the creditor, does not require of him an election and notice in order to maintain his action to recover the coin. 1871. *Russell v. McCormick* (45 Ala. 587), VI, 707.

28. Day's work under ten-hours law. Under a statute providing that, in all contracts for or relating to labor, ten hours of actual labor shall be taken to be a day's work, unless otherwise agreed by the parties, the plaintiff worked for the defendant from November to April, each day from sunrise to sunset, under an agreement for \$2.50 a day, without any agreement as to how many hours should constitute a day's work. The plaintiff brought suit to recover \$2.50 for each actual day's work; the defendant claimed that he was entitled to \$2.50 for each ten hours' work only. *Held*, that it was for the jury to determine whether or not the work done by the plaintiff in a day was, by the understanding and implied agreement of the parties, to be taken as a day's work. 1868. *Brooks v. Cotton* (48 N. H. 50), II, 172.

29. — A statute provided that "eight hours' work done in any one day shall be deemed a lawful day's work, unless otherwise agreed by the parties." Plaintiff, under a contract for a fixed price per week, worked sixteen hours per day. *Held*, that he could not recover double the agreed price. 1870. *Luake v. Hotchkiss* (87 Conn. 219), IX, 314, and note, 817.

30. Building contracts — acceptance by architect. By the terms of a contract for repairing a building, it was provided that the materials to be furnished should be of the best quality, and the workmanship performed in the best manner, subject to the acceptance or rejection of the architect, and all to be in strict accordance with the plans and specifications; the work to be paid for "when done completely and accepted." *Held*, that the acceptance, by the architect, did not relieve the contractors from their agreement to perform the work according to the plans and specifications; nor did his acceptance of a different class of work, or inferior materials, from those contracted for, bind the owner to pay for them. That the provision for acceptance was merely an additional safeguard against defects not discernible by an unskilled person. 1872. *Glacius et al. v. Black* (50 N. Y. 145), X, 449.

31. Duties on articles sold. The act of congress of 1864, chapter 173, section 94, which authorizes persons who before its enactment had made contracts without other provision therein for the payment of duties subsequently imposed on articles to be delivered under them, to recover from the purchaser a sum equivalent to the duties so imposed if the same had not been previously paid by him, is constitutional; and such sum may be sued for and recovered in either a Federal or State court. 1869. *Ammidown v. Freedland* (101 Mass. 808), III, 359.

IV. VALIDITY.

32. As regards public policy. The plaintiff obtained a contract for building a school-house for the district of which he was a director, and took part in the proceedings of the board which let the contract. *Held*, that the contract was void, on the ground that it was against public policy to allow the plaintiff, while holding a fiduciary relation to the district, to place himself in an antagonistic position and obtain the contract for himself, from the board of which he was a member. 1870. *Pickett v. School District* (25 Wis. 551), III, 105.

33. — The plaintiff brought an action against the defendant, an executor, for money had and received to plaintiff's use by defendant's testator, under an agreement made between plaintiff, the testator, and another, to operate in stock for the purpose of making a "corner," the money to be expended by the testator. *Held*, that the agreement was illegal and fraudulent, and that the plaintiff could not recover for any sums actually expended by the testator in the execution of the purposes of the agreement, although a recovery might be had for sums received, but not thus actually expended. 1869. *Sampson v. Shaw* (101 Mass. 145), III, 327.

34. — By a statute of the State, the board of auditors of the town of O. were authorized to receive sealed proposals for the collection of town taxes, and to award such collection to the person offering the most favorable terms. The plaintiff and defendant both made proposals. At the time of doing so they

made an agreement, that if either obtained the award, he would share the profits equally with the other. The defendant obtained the award and made certain profits. *Held*, that the agreement was contrary to public policy, and the plaintiff was not entitled to recover the stipulated share of the profits. 1870. *Atcheson v. Mallon* (43 N. Y. 147), III, 678.

35. — The plaintiff, defendant and two other parties, one of whom was an engineer in the employment of the State, upon the canals, entered into an agreement in the nature of a copartnership, to put in a bid for certain canal work. This agreement was forbidden by statute. The bid was put in, but before it was awarded, one H., who was a higher bidder for the same work, purchased the bid for \$400, giving his note therefor. It was afterward arranged that the plaintiff should collect the note, and that each of the parties interested should receive \$100 of the proceeds. Defendant was not paid. *Held*, that the original agreement of partnership being illegal the defendant could not enforce any of its unexecuted provisions, one of which was to divide the \$400. That the express agreement made for the collection of the note and the division of the money will not be enforced, it being only a promise to carry out the unexecuted provisions of the contract of partnership. 1870. *Woodworth v. Bennett* (43 N. Y. 278), III, 706.

36. — T. and others gave their promissory note to W. on consideration that W. would use his personal influence with a commanding general to secure the pardon or commutation of the sentence of T., who had been arrested by the military authorities of the United States, in 1865, on the charge of being a guerrilla, tried at Louisville, convicted and sentenced to death. In an action on the note, *held*, that the consideration was valid, on the ground that the military courts had no jurisdiction of the person convicted. 1870. *Thompson v. Wharton* (7 Bush, [Ky.] 568), III, 806.

37. Conspiracy against trade and commerce—agreement to control market. Five coal corporations of Pennsylvania entered into an agreement, in New York, by which they agreed to divide the market for the bituminous coal, from the two coal regions of which they had control, in certain proportions; to appoint a committee to take charge of the business of all the corporations, and to appoint a general sales-agent, to be stationed at Watkins, New York. By the agreement, it was further provided that each company was to deliver its proportion of the coal at such times and to such parties as the committee should, from time to time, direct; that the committee should adjust the prices of coal in the different markets; that the general agent should direct a suspension of shipment or delivery of coal by any of the companies making sales or deliveries beyond its proportion. By a statute of New York, "If two or more persons shall conspire to commit any act injurious * * * to trade or commerce, they shall be deemed guilty of a misdemeanor." In an action on a draft, given in furtherance of this agreement, *held*, that the agreement was in contravention of the statute and against public policy, and, therefore, illegal and void; also, that the draft was tainted with the illegality, and could not be recovered upon. 1871. *Morris Run Coal Co. v. Barclay Coal Co.* (68 Penn. St. 178), VIII, 159.

38. Between wrong-doers. A contract whereby the author of a libel agreed to indemnify the publisher is void. 1870. *Atkins v. Johnson* (48 Vt. 78), V, 280, and *note*, 264.

39. Gambling houses. In an action for work done and material furnished in fitting up a house, it is no defense that the work was done and material furnished with the knowledge, on the part of plaintiff, that defendant intended to use the house for gambling purposes. 1873. *Michael v. Bacon* (49 Mo. 474), VIII, 188, and *note*, 140.

40. In aid of rebellion. B. gave certain military companies ten bales of cotton to aid in equipping them for the Confederate service, which the agent of the companies sold to A. while yet undelivered. B. gave a receipt for the purchase-money, in which he agreed to hold the cotton subject to the order of A. Upon failure to deliver a portion of the cotton, action was brought for the value. *Held*, that, although the transaction was illegal as between B. and the military companies, the contract sued on was subsequent and distinct, unaffected by the original transaction, and therefore valid. 1869. *Holt v. Barton* (43 Miss. 711), II, 640.

41. Made in another country in violation of its laws. Plaintiff and defendant, in pursuance of an agreement to that effect, went to Canada in 1864 for the purpose of procuring men to be enlisted in the United States army, and before going, and also while there, plaintiff loaned to defendant money to pay his expenses. In an action to recover such money, *held*, that the contract, having for its object the violation of a law of Canada, was void, and that the plaintiff could not recover. 1868. *Hall v. Costello* (48 N. H. 176), II, 207.

42. As to slaves. By the abolition of slavery all contracts existing at the time relating to the sale of slaves were annulled. The sale of a slave being only the sale of his services for life, there was no difference between the right of an owner and of a hirer except in duration; obligations for the sale and also for the hirer of slaves were canceled by such abolition, and it is of no importance that the period of hire had terminated before the extinction of slavery, or that the contract was valid prior to that time. 1870. *Cormier v. Biencvenu* (23 La. An. 800), II, 728.

43. — A writing obligatory given for the purchase price of a slave in Kentucky, while slavery was legal in that State, may be recovered upon in Illinois, and the subsequent abolition of slavery does not affect the validity of the note. 1869. *Roundtree v. Baker* (53 Ill. 241), IV, 597.

44. Agreement with intent to delay creditors. A contract for the sale or conveyance of property, to hinder or delay creditors, is only illegal as to creditors; as between the parties and all others, it is legal and valid, and can be enforced in all its terms as any other contract. 1870. *Springer v. Drosch* (82 Ind. 486), II, 856.

45. Of minors. Under the common law, as administered in the United States, the general rule is, that the contracts of minors are voidable only, and not void. The exception is, where the contract on its face appears necessarily prejudicial to the minor. 1870. *Wilder's Succession* (23 La. An. 219), II, 721.

46. To collect claims against United States. Defendant having a claim against the United States, employed the plaintiff to collect it, agreeing to pay him therefor twenty per cent of the claim when collected. The United States paid the money to defendant. In an action by the plaintiff for his per centage, *held*, that the agreement was in contravention of the act of congress to prevent frauds upon the treasury (10 U. S. Stat. at Large, 170, § 1), and was therefore void. 1872. *Jones v. Blackledge* (9 Kans. 562), XII, 503.

47. Between belligerents. Defendants, at the breaking out of the rebellion, did business as copartners in Savannah, where one of them resided, and also in New York where the other resided. After the president had by proclamation declared the district of Savannah to be in a state of insurrection, the defendant residing there drew a bill of exchange in the firm name on the firm in New York in favor of plaintiff. *Held*, that the bill was a contract with the enemy, and therefore void. 1870. *Woods v. Wilder* (43 N. Y. 164), III, 684.

48. Mental unsoundness. Where a person of unsound mind makes a contract which is beneficial to him, the law supplies or presumes the existence of the requisite capacity, or, for his protection, estops the other party to set up and sustain this objection. 1869. *Allen v. Berryhill* (27 Iowa, 534), I, 809.

49. — A. having a life estate in certain lands and owning stock thereon, conveyed the same to defendant on condition that he should support her for life, which he did. After her death her executor brought action to recover for use and occupation of the lands and for value of the property, alleging that the conveyance was void, A being mentally imbecile at the time it was made. *Held*, that the plaintiff could not recover in the absence of bad faith or fraud on the part of the defendant. 1868. *Young v. Stevens* (48 N. H. 183), II, 202.

50. Parol evidence is admissible to show that a written contract was in furtherance of objects forbidden by law — *e. g.*, a champertous agreement between attorney and client. 1866. *Martin v. Clarke* (8 R. I. 889), V, 586.

V. PERFORMANCE.

51. Specific articles. An agreement to deliver specific articles, to be worth a specified amount, is legally fulfilled by the payment of the money in lieu of the articles. 1869. *Sims v. Cox* (40 Ga. 76), II, 560.

52. Where a contract is entire, and one party is willing to complete the performance, and is not in default, no promise can be implied on his part to compensate the other party for part performance, although the contract itself is void by the statute of frauds. 1871. *Galvin v. Prentice* (45 N. Y. 162), VI, 58.

VI. IN RESTRAINT OF TRADE.

53. Restraint of trade. G. leased a dyeing and scouring establishment, in the city of Baltimore, for a term of years, to F. & D., partners, and at the same time sold them the good-will of the business, and covenanted never to enter into competition, directly or indirectly, with the lessees, in Baltimore, in the trade or profession of dyeing and scouring. The partnership between F. & D. was subsequently dissolved; D. become sole owner of the partnership interest; the lease expired, and D. removed next door and established himself in the

regular business of dyeing and scouring. G. then made an arrangement with his son, by which the trade was re-established at the old stand, under the name of the son, the father being the real proprietor. On an application for an injunction, *held*, that the covenant was valid; that the dissolution of the partnership between F. and D. did not release the covenant from his obligation to D.; and that the re-establishment of the business by G., under the name of his son, was in violation of the covenant, and could be restrained by injunction. 1870. *Guerand v. Dandele* (32 Md. 561), III, 164.

54. — The defendant sold to the plaintiffs two patents issued to him for improvements in twist drills and collets, covenanting at the same time to transfer to the purchasers all his subsequent improvements in the process of manufacture, and that he would at no time aid, assist or encourage, in any manner, any competition against them. Afterward he removed to another State and engaged in the manufacture of other twist drills and collets, selling them in the same market in competition with plaintiffs. In a suit to restrain defendant from violating his covenant, *held*, that as the business was not local in its character, and the restraint not greater than the interest of the plaintiffs required the contract was valid. 1869. *Morse Twist Drill and Machine Co. v. Morse* (103 Mass. 72), IV, 518.

55. — An agreement never to engage in a certain business "in the city and county of San Francisco or State of California," is not a severable contract, and, being in total restraint of trade, and therefore void, as against public property, so far as it relates to the whole State, is also void entirely, and with respect to the city and county of San Francisco. 1870. *Morse v. Bonnet* (40 Cal. 251), VI, 621.

VII. ACTION ON.

56. When brought. Plaintiff entered into defendant's employ, under a contract to serve as clerk till a certain time, and then to become a partner. Before that time arrived, defendant discharged plaintiff and refused to receive him as a partner, and plaintiff immediately brought action for a breach of the contract. *Held*, that the contract was entire, and the action not prematurely brought. 1872. *Dugan v. Anderson* (36 Md. 567), XI, 509.

57. Damages. In an action to recover for a breach of a contract to deliver logs to be sawed at plaintiff's mill, *Held* (1), that the fact that the plaintiff sold his mill after he was notified by the defendants that they would pay for no more sawing, and deliver no more logs, or that he made a sub-contract with some other person to saw the logs that might be delivered, could not affect the right of recovery, or the measure of damages; (2) that the measure of damages was the contract price of sawing, less the cost of doing the work, in labor, in wear and tear of machinery, in time of use of machinery, and value of superintendence. 1870. *Dunn v. Johnson* (33 Ind. 54), V, 177.

58. False representations as to matters material to a contract, and upon which the party to whom they are made relies to his damage, constitute a defense to an action upon the contract, although their falsity was unknown to the party making them. 1871. *Frenzel v. Miller* (37 Ind. 1), X, 62. See ACTION

59. — The rule as to when contracts, in contravention of the statute, are void stated. 1870. *Lester v. Howard Bank* (33 Md. 558), III, 211.

Between citizens of the loyal and of the rebellious States — See WAR.

When parol evidence is admissible to explain — See EVIDENCE.

See, also, COMPROMISE; CONSTITUTIONAL LAW; CUSTOM AND USAGE; DAMAGES; MARRIAGE; STATUTE OF FRAUDS; SUBSCRIPTION; SUNDAY.

CONTRIBUTION.

1. *Between wrong-doers.* The rule that wrong-doers cannot have redress or contribution against each other is confined to cases where the person seeking redress must be presumed to have known he was doing an unlawful act. 1871. *Armstrong County v. Clarion County* (66 Penn. St. 218), V, 368.

2. — A contract by which the author of a libel agrees to indemnify the publisher thereof is void. 1870. *Atkins v. Johnson* (43 Vt. 78), V, 260, and *note*, 264-5.

3. *Between co-sureties.* The estate of a deceased surety of a principal debtor was discharged from liability to the creditor, through his negligence, by operation of the statute of limitations. A co-surety afterward paid the debt. *Held*, that the estate was liable to contribute to such co-surety, notwithstanding it was released from direct liability to the creditor. 1870. *Camp v. Bostwick* (20 Ohio St. 337), V, 669.

4. *Between counties for injuries on a joint bridge.* Where a person is injured in passing over a defective bridge, which two counties are jointly bound to keep in repair, and recovers judgment of one county, the other is liable to contribution. 1871. *Armstrong County v. Clarion County* (66 Penn. St. 218), V, 368.

See SHIP AND SHIPPING.

CONTRIBUTORY NEGLIGENCE — *See NEGLIGENCE.*

CONVERSION.

1. *By purchase of mortgaged chattels.* One who purchases mortgaged chattels, before default of the mortgagor in possession, and sells them again before default in payment and before demand of possession, is not liable for conversion. 1870. *Hathaway v. Brayman* (42 N. Y. 322), I, 524.

2. *Of stolen coupons.* Certain coupons of United States bonds, belonging to S., had been stolen from him, and delivered by one who received them from the thief to H., and by him, acting as agent and in good faith without gross negligence, sold and turned into money, which he paid to the person from whom he received them. *Held*, that H. was not liable to S. for their conversion. 1869. *Spooner v. Holmes* (102 Mass. 503), III, 491.

3. A purchase in good faith, from one who has no title and no right to transfer the property, will not ordinarily constitute a defense to an action for its conversion; but this rule does not apply when the act of appropriation can

be justified, as having been authorized in any manner by the owner of the property. 1870. *Hills v. Snell* (104 Mass. 173), VI, 216.

4. **Intent.** Defendant received bills of exchange for acceptance, and on demand for them by the persons entitled thereto, he looked for them, but not finding them, said he might have burned them up with papers he considered of no value. *Held*, that he was not liable in trover, there being no evidence of a voluntary or intentional destruction or loss of the bills. 1873. *Salt Springs National Bank v. Wheeler* (48 N. Y. 492), VIII, 564.

5. **Of shares of stock.** A. delivered to G. a number of shares of stock in a mining company, as collateral security, and to be sold by G. whenever he could obtain not less than a specified sum per share. G. disposed of a part of these shares on his own account for less than a sum agreed, and, in settlement with A., transferred to him an equal number of other shares of the same stock and of the same value. A. alleged fraud in the settlement, and brought action to recover the money received for the shares sold. G. set up as a defense that he at all times had and held for A.'s use an equal number of shares of equal value, and that he has so replaced them. *Held*, that G. did not become responsible for the proceeds of the sale of the shares. The technical breach of trust was *Damnum absque injuria*. 1871. *Atkins v. Gamble* (49 Cal. 86), X, 283.

6. **By bank.** A. borrowed from B., an incorporated bank, \$4,000 in Confederate treasury notes, to be returned within ten days, and left with B., as security, \$4,000 in its own bills—the latter being more valuable than the former. A., within the limited time, offered to return \$4,000 in Confederate treasury notes, and demanded back the \$4,000 he had left with B. as security. The latter refused to take the one or return the other. *Held*, (WILLIARD, J. dissenting), that B.'s refusal to return the \$4,000 in its own bills was a conversion of those bills, and that trover lay for such conversion. 1869. *Abraham v. The Southwestern Railroad Bank* (1 S. C., N. S., 441), VII, 83.

See **BILLS AND NOTES; DAMAGES.**

CONVEYANCE.

- I. CONTRACT TO CONVEY.
- II. EXECUTION OF DEED.
- III. DELIVERY.
- IV. ACKNOWLEDGMENT AND REGISTRATION.
- V. RECITALS AND DESCRIPTIONS.
- VI. MISCELLANEOUS CASES.
- VII. OF COVENANTS — *See* **COVENANTS.**

I. CONTRACTS TO CONVEY.

1. **Partial destruction of property.** If the owner of a house and land agrees to sell and convey it upon the payment of a certain price which the purchaser agrees to pay, and before full payment, the house is destroyed by accidental fire, so that the vendor cannot perform the agreement on his part, he cannot recover or retain any part of the purchase-money. 1871. *Wells v. Calnan* (107 Mass. 514), IX, 65.

2. — Therefore, where plaintiff contracted to sell and convey to defendant a farm having buildings thereon, and to deliver a deed in "fee simple of said premises," upon the payment, by defendant on a day named, of the price stipulated, and before the day named and the tender by plaintiff of the deed the buildings on the premises were burned, and the value of the premises greatly reduced thereby. *Held*, that plaintiff could not maintain an action upon the contract. *Ib.*

3. **Warranty deed.** Under an agreement to sell land, a covenant to convey a good title does not necessarily entitle the covenantee to a warranty deed. 1869. *Kyle v. Kavanagh* (108 Mass. 356), IV, 560.

4. **Parol promise to convey — when will be enforced.** The plaintiff, owning a piece of wild land, told the defendants that the premises should 'be theirs as long as they lived, and put them in possession of the same. The defendants occupied the premises for a number of years, and made extensive improvements upon them. *Held*, that the expenditures made upon permanent improvements constituted, in equity, a consideration for the promise of the plaintiff, and that the performance of the promise, although by parol, could be enforced in equity, and that an action of ejectment would not lie against defendants in possession. 1870. *Freeman v. Freeman* (43 N. Y. 84), III, 657.

II. EXECUTION OF DEED.

5. **Blanks.** Defendant executed a note and mortgage, leaving a blank in each for the name of the payee and mortgagee, and delivered them to an agent to enable him to raise money thereon. The agent procured the plaintiff to loan the money and inserted his name in the blanks. *Held*, that the instruments were valid without a new execution and delivery. 1871. *Van Bta v. Evenson* (28 Wis. 33), IX, 486.

6. — A deed, in due form, signed and acknowledged by the grantor, does not become his deed until the name of a grantee is inserted therein; and an agent of the grantor cannot insert the name of a grantee in the absence of the grantor, unless his authority is in writing. 1871. *Upton v. Archer* (41 Cal. 85), X, 266, and *note*, 267.

7. — Plaintiff sold to defendant, by deed, a lot of gravel according to specifications and profiles made by a surveyor. Blanks were left in the deed for the quantity of gravel and the sum to be paid, and the parties orally agreed that the surveyor should fill them up after ascertaining the quantity. *Held*, that he might do so after the delivery of the deed, and in the plaintiff's absence. 1871. *Voss v. Dolan* (108 Mass. 155), XI, 331.

8. **Attestation.** Where a statute requires that a deed of land shall be attested by witnesses, such attestation is essential to a valid conveyance. 1870. *Crane v. Reeder* (21 Mich. 24), IV, 490.

9. **Adopting signature.** Where a person, whose name has been subscribed to a deed in his absence, appears before a magistrate and duly acknowledges the execution of the deed, he thereby adopts the signature as his own. 1868. *Bartlett v. Drake* (100 Mass. 174), I, 101.

III. DELIVERY.

10. **Of voluntary deed to infants.** A father voluntarily conveyed lands to his infant children, acknowledged the deed and placed it on record, but did not deliver it. Afterward he petitioned to have the cloud of the deed removed from his title. *Held*, that having the deed recorded was sufficient delivery to the infant children, and that the petition must be dismissed. 1869. *Cecil v. Beaver* (28 Iowa, 241), IV, 174.

11. **Delivery to register.** A register of deeds, at the grantor's request, wrote a deed, which the grantor signed, acknowledged and left with the register. The grantee was absent, and the register had no authority from him to receive the deed; after recording it the register returned the deed to the grantor, at his request. *Held*, that there was no delivery to the grantee. 1870. *Hawkes v. Pike* (105 Mass. 580), VII, 554.

12. **Conveyance after issue of attachment.** At the time of the execution and delivery of a deed conveying real estate, for a valuable and sufficient consideration, a writ of attachment against the property of the grantor had issued and was in the hands of the sheriff, of which facts the grantee was ignorant, but the land conveyed had not been levied on under the writ. *Held*, that the deed was valid and not fraudulent. 1871. *Lowry v. Howard* (85 Ind. 170), IX, 676.

13. **Assent of grantee when equivalent to actual possession.** B. executed a deed of certain property conveying it to K., and sent it to his (B.'s) agent to be recorded, which was done. There was no pecuniary consideration for the deed, nor was there any previous arrangement or communication between B. and K. on the subject; nor had K. any knowledge of the execution of the deed; nor did he or his authorized agent ever have possession of it. Subsequently B. informed K. of the deed and K. assented orally to receive it. *Held*, that such assent made the deed operative from the time the assent was given. 1871. *Kingsbury v. Burnside* (58 Ill. 810), XI, 67.

14. **Where grantor does not accept.** R. purchased the interest of C., a judgment debtor, in land. The deed to C. contained a false description, and R. attempted to strengthen his title by procuring a new deed containing a true description from the grantor of C. The new deed was never delivered to or accepted by C. *Held*, that R. obtained no legal title by the procurement of the new deed. 1871. *Rogers v. Carey* (47 Mo. 232), IV, 822.

15. **Escrow — delivery after death.** P. executed a deed of lands to B. and placed it in the hands of S. with instructions to hold it subject to his control, until his death, and then to deliver it to B. On P.'s death S. delivered the deed to B. *Held*, that there was no valid delivery, and that nothing passed by the deed. 1872. *Pruteman v. Baker* (80 Wis. 644), XI, 592.

IV. ACKNOWLEDGMENT AND REGISTRATION.

16. **Certificate of acknowledgment.** When it is provided by statute that, in order to the registration or recording of a conveyance, the deed shall be acknowledged before some officer, and a certificate thereof entered upon the deed, if the deed is entered without the prescribed acknowledgment, the

recording or registration will not be constructive notice to any one. 1870. *Bishop v. Schneider* (46 Mo. 473), II, 538.

17. **Failure of recorder to index.** A deed filed for record in a recorder's office, and recorded, is notice to subsequent purchasers, notwithstanding the failure of the officer to index it. 1870. *Bishop v. Schneider* (46 Mo. 473), II, 538.

18. **When recorded deed has preference to prior unrecorded deed.** Where a person conveyed land by a deed, which was not recorded, and his heir, after his death, conveyed the same land, by a warranty deed which was duly recorded, to an innocent purchaser, for value, *held*, that the recorded deed from the heir operated to divest the title of the grantee in the recorded deed from the ancestor. 1870. *Youngblood v. Vastine* (46 Mo. 239), II, 509.

19. — G. conveyed land to B. by a deed which was never recorded. After G.'s death, his heirs conveyed the same land to B. by a quit-claim deed, R. knowing nothing of the former conveyance. *Held*, that R., having only a quit-claim deed, was not a *bona fide* purchaser. 1870. *Rodgers v. Burckhard* (84 Tex. 441), VII, 288.

20. **Priority.** Defendant, the owner of certain lands, granted the same by quit-claim deed to the plaintiff. This deed was never recorded. Subsequently defendant, for a valuable consideration made a quit-claim deed of the same lands to L., who had no notice of the prior deed. L.'s deed was duly recorded. In an action by plaintiff against defendant for damages, *held*, that plaintiff's interest in the land was not affected by the deed to L., and that he, therefore, had no cause of action. 1872. *Marshall v. Roberts* (18 Minn. 405), X, 201.

V. RECITALS AND DESCRIPTIONS.

21. **Recitals.** A recital in a deed of land that the consideration has been paid, is only *prima facie* evidence of payment. 1870. *Parker v. Fby* (43 Miss. 260), V, 484.

22. — The recital in a deed stated, in effect, that it was made in pursuance of a contract of sale entered into by the grantor and A., of whom the grantee was the assignee, and as such entitled to a fulfillment of the contract. The grantee subsequently mortgaged the premises so conveyed to W. *Held*, that the recital was not constructive notice to W. of any equities in favor of A., and that it did not impose upon him the duty of examining the contract of sale or the assignment. 1871. *Acer v. Westcott* (46 N. Y. 384), VII, 355.

23. — In an action for a breach of covenants in a warranty deed, it appeared that the deeds, after the usual words of conveyance and a description of the premises, contained the words "and meaning hereby to convey * * * the same premises and title as conveyed to me by D. W., and no more." It appeared, also, that D. W. conveyed to defendant only an equity of redemption from a mortgage which was still outstanding at the date of the deed, and which plaintiff was subsequently obliged to pay. *Held*, that the deed only conveyed an equity of redemption, and that the action could not be maintained. 1871. *Bates v. Foster* (59 Me. 157), VIII, 406.

24. Description. In a deed of land, the description by lot should prevail over that by bearings and distances. Where the language conveying premises was: "Lot No. 8, in block 87, in the old town of Hudson, now Macon, beginning at the north east corner; thence west to the alley, * * * to the beginning," the description actually embracing a less area than lot 8, *held*, that all of lot 8 was conveyed. 1871. *Rutherford v. Tracy* (48 Mo. 325) VIII, 104.

25. Description—evidence. In an action for the purchase-money under articles of agreement for the sale of land, a deed containing a description like that in the articles is *prima facie* certain enough, and should not be excluded from evidence on the ground of *insufficiency* in the description. The question of such insufficiency is for consideration, subsequent to the admission in evidence. 1871. *Nagley v. Lindsay* (67 Penn. St. 217), V, 427.

26. Ambiguous description. Where the legal boundary between two towns differed from that popularly recognized, and a deed described a boundary in terms equally applicable to either, *held*, that parol evidence was admissible to explain the ambiguity. 1868. *Putnam v. Bond* (100 Mass. 58), I, 82.

VI. MISCELLANEOUS CASES.

27. To husband and wife. On conveyance of land to husband and wife each takes an entirety. 1868. *Hemingway v. Scales* (42 Miss. 1), II, 586.

28. A deed absolute on its face, but made to secure the payment of money, is, in effect, a mortgage. 1870. *Klinck v. Price* (4 W. Va. 4), VI, 268.

29. — When a deed treated as a mortgage. 1872. *Campbell v. Dearborn* (109 Mass. 180), XII, 671.

30. Alteration in deed by grantee. An alteration in a deed of conveyance by a grantee after delivery does not affect the legal title or re-invest the same in the grantor, although a fraudulent and material change may disable the holder from bringing an action upon its covenants. 1870. *Woods v. Hilderbrand* (46 Mo. 284), II, 518.

31. Stolen deed. A deed not fully executed, and which had never been delivered, was stolen from the possession of the grantor, without negligence on his part, by the grantee named therein. *Held*, that no title passed, even as to subsequent purchasers. 1872. *Tisher v. Beckwith* (30 Wis. 55), XI, 546.

32. Crop. A crop of corn, ripe, but still standing uncut in the field, passes by deed with the freehold. 1870. *Tripp v. Haaseig* (20 Mich. 254), IV, 888.

33. After acquired title. A person having no title or interest in a certain tract of land, executed a deed thereof without covenants of seisin or warranty, using as words of conveyance the words, "grants, bargains, sells, aliens, releases, quit-claims and conveys." Afterward the grantor acquired title to the land and conveyed it to defendant, who purchased with knowledge of plaintiff's deed. *Held*, that the deed to plaintiff was a quit-claim deed, and that the grantor's after-acquired title did not inure to the benefit of plaintiff. 1872. *Bruce v. Luke* (9 Kans. 201), XII, 491.

34. Relief from misrepresentations. The defendant made a conveyance of

land to the plaintiff, not actually including a certain lot of seventeen acres, which defendant had represented and plaintiff had been led to believe to be covered by the deed. By a proviso in the deed, plaintiff assumed the burden of maintaining a line fence, being induced to consent to the proviso by false representations of the defendant in regard to the amount of fence which his neighbors would be obliged to maintain. Part of the purchase-money for the land was paid in government bonds, the defendant agreeing to take them at par and pay the interest and premium, and there was a considerable sum due to the plaintiff thereon. By a bill in equity, the plaintiff prayed that the defendant be compelled to convey the additional seventeen acres, to release plaintiff from the proviso and to pay the amount due on the bonds. *Held*, that the conveyance prayed for could not be decreed; that the remedy relating to the proviso and to the bonds was adequate at law; and that, as the plaintiff did not offer to rescind the whole contract, there was no remedy in equity. 1869. *Glass v. Hulbert* (102 Mass. 24), III, 418.

35. Guardian's sale. An infant's land was sold in pursuance of an order of the court, granted on petition of the guardian. Between the time of the granting of the order and of the sale under it, a judgment was recovered against the infant, execution levied and the land sold. *Held*, that the purchaser's title under the guardian's sale did not relate back to the date of the order of sale, but that the property passed under the execution sale. 1871. *Shaffner v. Briggs* (36 Ind. 55), X, 1.

36. Fraud of vendee. Where parcels of land, not intended to be sold, are included in a deed through the fraud of the vendee, and no part of the consideration is paid or received on account thereof, the vendee may set up the fraud and avoid the conveyance of those parcels without returning the consideration paid or setting aside the entire deed. 1868. *Bartlett v. Draks* (100 Mass. 174), I, 101.

37. A warranty of the guaranty of land conveyed in a deed cannot be proved by parol evidence. 1869. *Cabot v. Christie* (42 Vt. 121), I, 313.

38. Voluntary conveyance — estoppel of grantor as against subsequent bona fide purchaser. A, owning certain lands, and intending to convey the same to his daughter as a gift, executed a deed, in which, through a mistake of the draughtsman, the premises were incorrectly described, and the name of the daughter's husband inserted instead of her own as grantee. No consideration was paid or promised for the conveyance, although a consideration was named in the deed. The deed was delivered to the daughter and duly recorded, and she was placed in possession. Afterward the husband executed a mortgage, containing the same erroneous description of the premises, to a *bonn fide* mortgagee, who, upon foreclosure, purchased the premises and took a sheriff's deed containing the same erroneous description. Suit was brought by purchaser to correct the description; whereupon A, having then first discovered the error in his former deed, executed and delivered to his daughter another voluntary deed, wherein she was named as grantee, and the premises correctly described. *Held*, (1), That the purchaser having acted in good faith, and without any notice of defect in the husband's title, A was estopped from denying

that the deed to the husband was made in good faith, or that the grantee was properly named therein; (2), that the daughter, being a voluntary grantee, had no claim, either under the original deed or under the one executed pending suit; (3), that the deed to the husband was not void for uncertainty in the description of the premises conveyed, and that the plaintiffs were entitled to have their deed reformed. 1869. *German Mutual Insurance Co. v. Grim* (83 Ind. 249), II, 341.

39. Measure of damages in actions for breach of contract to convey lands. *See DAMAGES.*

See, also, ESTOPPEL; EVIDENCE; EVICTION; FRAUD; MISTAKE; PARTY WALL.

COPYRIGHT.

Before publication. R., of London, composed a drama, and assigned to plaintiff the exclusive right of printing, publishing and producing it on the stage in the United States. R. afterward allowed it to be performed at a London theater. Defendant, a resident of New York city, printed and sold copies of the drama in that city, having received the drama from persons who had seen and heard it in London. *Held*, that the permission to perform the drama at the London theater did not amount to a dedication of it to the public, nor give any hearer any title or right to the manuscript or a copy of it; and that plaintiff, although an alien, was entitled to an injunction in the courts of New York, restraining defendant from printing or selling copies of it. 1872. *Palmer v. De Witt* (47 N. Y. 532), VII, 480, and *note*, 488.

CORPORATIONS.

I. STOCKHOLDERS AND MEMBERS.

II. OFFICERS.

III. STOCKS AND DIVIDENDS.

IV. RIGHTS AND LIABILITIES.

1. STOCKHOLDERS AND MEMBERS.

1. **Subscription to capital stock — effect of.** The obligation of actual payment is created in all cases by a subscription to the capital stock of a corporation, unless the terms of the subscription are such as to exclude it; and where a subscriber fails to comply with the conditions and terms of the subscription, without any default on the part of the corporation or its officers, he has no such rights or interests in the stock as to entitle him to an injunction restraining them from interfering with the concerns, business, or affairs, of the corporation. 1871. *Bussey v. Hooper et al.* (85 Md. 15), VI, 850.

2. — The mere fact of subscribing to the stock of an incorporated company does not constitute the subscriber a stockholder; but it *seems* that such a subscription puts it in his power to become a stockholder, by compelling the corporation to give him the legal evidence of his being a stockholder, upon his complying with the terms of the subscription. *Id.*

3. — Subscription to the capital stock of a corporation, without payment when due, does not render it competent for the subscriber to question the

regularity of the organization of the corporation, or the authority of its officers. *Id.*

4. Expulsion of members. Defendant, a corporation, was empowered by its charter to expel members in the manner to be prescribed by its rules and by-laws. A by-law provided for the expulsion of a member for non-fulfillment of any contract, whether written or verbal. *Held*, that the by-law was reasonable, and authorized the expulsion of a member refusing to perform a contract void by the statute of frauds. 1871. *Dickenson v. Chamber of Commerce of Milwaukee* (29 Wis. 45), IX, 544.

5. Agreement to control. Three persons owning a majority of the stock of a corporation, entered into an agreement, as between themselves, to elect the officers of the company and to manage its affairs as they or a majority of them should determine. *Held*, that the agreement was not illegal or void as against public policy. 1870. *Faulds v. Yates* (57 Ill. 416), XI, 24.

6. Liability of stockholders. Plaintiff owned stock in the defendant's company, whose charter, subject to amendment, alteration or appeal at the pleasure of the general assembly, provided that the stockholders should not be liable beyond the amount of their shares for any loss sustained by the company or for any debt due thereon. Afterward, the general assembly enacted that a company might fill up its capital stock, if reduced from its original amount by losses, by assessment on the stockholders, pursuant to which law defendant assessed plaintiff. *Held*, that the act authorizing the assessment was constitutional. 1869. *Gardner v. Hope Insurance Co.* (9 R. I. 194) XI, 238.

II. OFFICERS.

7. Voting on stock held in trust — mandamus. Some of the stockholders of a manufacturing company transferred four hundred shares to C., to be held by him "for the benefit of the corporation," and, at an election of officers, C. voted on these four hundred shares, whereupon the election was claimed by the person having the highest number of votes. *Held*, that a mandamus would issue to compel the surrender of the offices to the persons having the highest number of votes, after excluding the four hundred. 1869. *American Railway Frog Co. v. Haven* (101 Mass. 398), III, 877.

8. — M., the pledgee of stock, standing on the books of the corporation in the name of "M., Trustee," and on which he had repeatedly voted without objection, voted thereon at an election of directors. In quo warranto against the officers declared elected at such election, held (1), that M. was entitled to vote, in the absence of any claim by the pledgers to do so; (2) that after the election it was too late for the pledgers to ask the court to disturb the result. 1870. *Hoppin v. Buffum* (9 R. I. 515), XI, 291.

9. Action by stockholder against directors. An individual stockholder in a corporation may maintain an equitable action against the directors for misconduct in office. Where the corporation itself is liable, or through fraud or collusion, omits to sue; and when the directors are charged with fraud it is not necessary for the stockholder to apply to them for the use of

the corporate name in bringing the suit. 1880. *Mussina v. Goldthwaite* (34 Tex. 125), VII, 281.

10. — In a suit to foreclose a mortgage given by a stock company to secure certain of its bonds, there was a judgment by default taken against the company, whereupon an individual stockholder filed a plea of intervention, setting up that the bonds were fraudulently issued by the directors, and charging collusion between the plaintiff and the officers of the company. On demurrer, *held*, that the plea was good. *Ib.*

11. Cannot contract with the company. A director in an incorporated company cannot become a contractor with the company, nor can he have any personal and pecuniary interest in a contract between the company and a third person. 1871. *Port v. Russell* (36 Ind. 60), X, 5, and *note*, 12.

12. — The complaint in an action by persons assessed for the construction of a road to enjoin the payment of moneys to contractors for building the road, charged that the contracts had been given to two persons, one of whom was a director of the road company, and that the other contractor had an illegal and corrupt understanding with the directors that he was to share the profits with them. *Held*, that there were sufficient facts alleged to constitute a cause of action, and a demurrer would not lie. *Ib.*

13. Liability for losses. Directors of a corporation cannot, in the absence of any fraudulent conduct, embezzlement or misappropriation of funds, or realization of profit not common to all the stockholders, be made to account to the stockholders for losses arising from mismanagement merely; or be made liable for mistakes of judgment, or want of skill or knowledge. 1879. *Springer's Appeal* (71 Penn St. 11), X, 684.

14. False representations in circulars. The director of a company is not liable for representations, false in fact but not known by him to be so, made in published circulars of the company, on which his name appears only as one of the list of directors. 1872. *Wakeman v. Dalley* (51 N. Y. 27), X, 551.

III. STOCKS AND DIVIDENDS.

15. Action for refusal to issue stocks. An action will lie against a corporation for wrongfully refusing to issue certificates of stock to a party entitled; and the right of an associate or his assignee to sue the corporation, into which the association is subsequently transformed, for its refusal to issue certificates of stock to which he is entitled, does not differ in principle from that of an ordinary assignee of stock. 1871. *Baltimore City Passenger Railway Co. v. Sewell* (35 Md. 238), VI, 402.

16. — Where the articles or by-laws of an association, formed with a view of being incorporated, provide that the shares are "transferable on the books," nevertheless, an assignee may sue the corporation, when formed, for refusing to issue certificates of stock although the assignment was not made on the books. *Ib.*

17. — Measure of damages. In an action against a corporation for a wrongful refusal to issue stock, the measure of damages is the value of the

stock at the time of the demand, together with the dividends accrued thereon at that time. *Id.*

18. **A certificate of stock transferred in blank is not a negotiable instrument.** 1868. *Shaw v. Spencer* (100 Mass. 882), I, 115.

19. **Who may increase stock.** The charter of a corporation provided that its capital stock should be \$100,000, with the power to increase it to \$500,000, but did not provide by whom this power should be exercised. *Held*, that the board of directors could not increase the capital stock without the assent of the stockholders. 1871. *Eidman v. Bowman* (58 Ill. 444), XI, 90, and *note*, 95.

20. **Dividends.** A sale of shares in a company carries with it dividends already declared, but to be paid subsequently. 1873. *Burroughs v. North Carolina Railroad Co.* (67 N. C. 376), XII, 611.

21. — Where the property of a corporation consists wholly of real estate and a part thereof is taken by eminent domain, the compensation therefor, if distributed as a dividend, is capital and not income. 1872. *Heard v. Eldredge* (109 Mass. 258), XII, 687.

22. — The guaranty of a dividend by a corporation, or "guaranteed dividends," means only a pledge of the funds legally applicable to the purposes of a dividend. 1856. *Taft v. Hartford, etc., R. R. Co.* (8 R. I. 310), V, 575.

VI. RIGHTS AND LIABILITIES.

23. **May hold land out of State.** A corporation chartered in Indiana, *held* to have power to purchase and hold lands in Michigan without any statute of the latter State affirmatively authorizing it. (CAMPBELL, J., dissenting.) 1873. *Thompson v. Waters* (25 Mich. 214), XII, 243.

24. **The accommodation note of a corporation is valid in the hands of a holder in good faith and for value.** 1869. *Monument National Bank v. Globe Works* (101 Mass. 57), III, 822.

25. **When cannot impose liabilities on members.** A corporation cannot, by resolution or by-laws, impose personal and individual liability upon its members, unless the power is specifically granted in the charter or by general statute. The capital stock is the fund out of which the debts of a corporation must be paid, and dividends of profit already paid to the stockholders cannot be reached by creditors of the corporation. Funds due to a corporation (as for rent) may be reached by proper process. 1869. *Reid v. The Easton Manufacturing Co.* (40 Ga. 98), II, 568.

26. **Damages for acts of servants.** A corporation is liable to exemplary or punitive damages for such acts, done by its agents or servants, acting within the scope of their employment, as would, if done by an individual acting for himself, render him liable for such damages. 1869. *Atlantic & Great Western Railway Co. v. Dunn* (19 Ohio St. 163), II, 383.

27. **When doctrine of ultra vires does not apply.** A mining corporation was organized under a statute requiring the operations of the corporation to be carried on in Illinois. The corporation afterward engaged in mining in

Colorado, and in the prosecution of its work borrowed large sums of money, for which notes of the corporation were given. *Held*, that a stockholder could not enjoin the collection of the notes, the doctrine of *ultra vires* not applying. 1870. *Bradley v. Ballard* (55 Ill. 418), VIII, 656.

28. **Penalty against not enforceable out of State.** The provisions of a statute of Pennsylvania limited the amount of the debts and liabilities (not including capital stock) of certain companies to the amount of their capital actually paid in, and further provided that "if any debts or liabilities shall be contracted exceeding the said amount, the directors and officers contracting the same, or assenting thereto, shall be jointly and severally liable, in their individual capacities, for the whole amount of such excess, and the same may be recovered by action of debt as in other cases." In an action to recover for a violation of this statute, *held*, that the liability so created was in the nature of a penalty, and not enforceable by action outside of the State which enacted the law. 1870. *First National Bank v. Price* (88 Md 487), III, 204.

29. **Information against.** A public corporation may be restrained from doing an act not authorized by law on an information in equity by a law officer of the State, in the name of the State. WAGNER, J., dissenting. 1878. *State v. County Court* (51 Mo. 850), XI, 454.

30. — An information in equity, by the attorney-general, cannot be maintained against a private trading corporation, where the acts complained of are not shown to have injured or endangered any rights of the public or of any individual or other corporation, and where the only objection to them is that they are not authorized by its acts of incorporation, and are, therefore, against public policy. 1870. *Attorney-General v. Tudor Ice Co.* (104 Mass. 239), VI, 227.

31. **Violation of charter — how determined.** The charter of a corporation contained a provision that it should not be repealed "unless it shall be made to appear to the legislature that there has been a violation by the company of some of the provisions of this act." *Held*, that such violation must be made to appear by the judgment of a court, and could not be adjudged by the legislature. 1872. *Flint & Fentonville Plank-road Co. v. Woodhull* (25 Mich. 99), XII, 233.

See MUNICIPAL CORPORATION; TRUST; WILLS.

COUNTY — *See* MUNICIPAL CORPORATION

COUPONS — *See* BONDS.

COURTS — *See* JUDICIAL POWER; JURISDICTION.

COVENANTS.

1. **Independent or dependent.** In a contract for the sale of land, the vendee agreed to pay the purchase-money in installments, and the vendor executed a bond conditioned to deliver the deed upon the payment of the last installment; *held*, that the covenants were independent and that the vendor might enforce

payment of all the installments without first tendering a deed. 1869. *Bowen v. Bailey* (42 Miss. 405), II, 601.

2. — H. sold to R. lands at an agreed price, part of which was paid in cash and R.'s note given for the balance. H., at the same time, executed and delivered his bond conditioned to make title to R. when said note was paid. H. afterward assigned the note before its maturity to M., who brought action thereon after maturity. R. demurred on the ground that no deed of the land had been tendered. *Held*, that the covenant in the note and that in the bond were dependent, and that the demurrer was well taken. 1869. *Robinson v. Harbour* (42 Miss. 797), II, 671. *See contra Bowen*, 1 *Bailey*, *supra*.

3. Of title and quiet enjoyment — breach of. It is not necessary that there should be an actual eviction by process of law to constitute a breach of covenant of title and quiet enjoyment. Such covenant is broken whenever there has been an involuntary loss of possession by reason of the hostile assertion of an irresistible paramount title, whether that title be established by judgment or not. 1870. *McGary v. Hastings* (39 Cal. 360), II, 456.

4. To stand seized. A deed of land, reciting a pecuniary consideration, and to take effect after the decease of the grantor, upon condition of certain services to be rendered him, may be maintained as a covenant to stand seized to the grantee's use, notwithstanding the absence of the relation of blood or marriage between the grantor and grantee. 1869. *Trafton v. Hawes* (102 Mass. 533), III, 494.

5. Against incumbrance — right of way of railroad. The owner of a parcel of land, through which a railroad ran, conveyed the land by a deed purporting to convey the entire parcel without reservations as to the right of way of the railroad. In an action of covenant, *held*, that this right of way was such an incumbrance as would constitute a breach of a covenant against incumbrance contained in the deed. 1869. *Beach v. Miller* (51 Ill. 203), II, 290.

6. — Easements. Defendant conveyed to plaintiff, by deed of warranty, premises, a portion of which he had previously conveyed and given possession of to another. The premises were subject also to certain easements, such as a right of way, and the right to maintain a dam. *Held*, that the covenant of seizin, so far as it related to the portion previously conveyed, was broken at the date of the deed, and that the existence of the outstanding easements was a breach of the covenants of warranty. 1871. *Lamb v. Danforth* (59 Me. 323), VIII, 426.

7. — Defendant conveyed to plaintiff, by a deed containing the usual covenants, land, part of which was occupied by a railroad. In an action upon the covenant of seizin, *held*, that the covenant of seizin was not broken; but, *seem* that the covenant against incumbrance was. 1873. *Kellogg v. Malin* (50 Mo. 496), XI, 426, and *note*, 481.

8. A covenant of seizin runs with the land, and is divisible, so that if the land be sold in parcels to different purchasers, each may maintain an action upon the covenant. 1871. *Schofield v. The Homestead Company* (32 Iowa, 317), VII, 197.

9. Of warranty runs with land. Where the covenantee, in a deed of land, takes possession and conveys, a covenant of warranty in the deed to him will pass to his grantee, although the covenantor was not in possession at the time of his conveyance. 1870. *Weed v. Larkin* (54 Ill. 489), V, 149.

10. To convey in lease running with the land. A lease of premises contained covenants to the effect that, upon the payment of \$500, the rent should cease and the premises be conveyed to the lessee; that the rent should be paid semi-annually, in April and October, and that if the lessee neglected to build a house and make repairs as covenanted, or neglected to pay rent, the lessor should have the right to enter upon the premises and take possession thereof. The lessee assigned his interest and the assignee went into possession, but neither the lessee nor assignee fulfilled the covenant to build and repair. The rent was paid for four years; in the fifth year, the October rent was accepted, but in January following, the lessor entered upon and took possession of the premises, complaining that the building and repairs had not been made as covenanted. In March, the orator, administrators of the assignee who died intestate, tendered the lessor \$500, with the semi-annual rent due the following month, and demanded a conveyance of the premises. The lessor had conveyed the premises to G. a few days previous, and refused to comply with the orator's demand. *Held*, that the covenant to convey, contained in the lease, ran with the land, and was assignable; that the lessor had waived his right to enter and take possession, until the right of the assignee had become valuable, that, if there were any forfeiture, the tender of payment of the \$500, and the accruing rent saved it; and that as G., the grantee, stood in no better position than the lessor, a decree should be entered for a conveyance of the premises to the orator. 1872. *Hagar v. Buck* (44 Vt. 285), VIII, 368.

11. To make and maintain fence — when runs with land — incumbrance damages for breach. The owner of a farm conveyed to a railroad company a strip of it by a deed containing this clause: "I hereby covenant that I and my heirs and assigns will make and maintain a sufficient fence through the whole length of that part of the railroad which runs through my farm; this covenant of maintaining the fence to be perpetual and obligatory on me and all persons who shall become owners of the land on each side of said railroad." *Held*, (1) that this covenant gave to the railroad company an interest in the nature of an easement in the grantor's adjoining land, and ran with that land, and was an incumbrance within the meaning of the covenant against incumbrances in a subsequent conveyance thereof; (2) that the obligation to maintain the fence was not impaired by the omission to perform it for twenty years, without any evidence of its having been released or extinguished; (3) that an action for a breach of the covenant against incumbrances in the second deed was not barred by the statute of limitations until twenty years after the date of that deed; (4) that the fence was to be maintained on each side of the railroad, and wholly on the land retained by the grantor in the first deed; (5) that the measure of damages for a breach of the covenant against incumbrances was a just compensation for the real injury resulting from the incumbrance, to be estimated by the difference in the fair market value of the estate by reason of the existence of the incumbrance, and taking into consideration the cost of fencing, so

far only as it exceeded the cost of any fences which the situation and circumstances of the estate would otherwise have required the maintenance of. 1871. *Bronson v. Coffin* (108 Mass. 175), XI, 335.

12. **Against use.** A grantee under a conveyance with a restriction that none but a dwelling-house shall be erected on the premises, and that the "building, when erected, is not to be occupied for the purpose of carrying on any offensive trade or calling whatever," cannot use a part of a dwelling, so erected, as a grocery store. 1869. *Dorr v. Harrahan*, (101 Mass. 531), III, 398.

13. **The owner of a farm** granted to plaintiff the right to dig out and box up a spring thereon, and to put a pipe in it leading to plaintiff's house, and warranted these rights to plaintiff. *Held*, that the owner did not thereby covenant that he should not dig a spring on another part of his farm (twenty-seven feet distant) to supply his buildings with water, although, by so doing, plaintiff's spring should become useless, on account of the underground percolation being reduced. 1871. *Bliss v. Greeley* (45 N. Y. 671), VI, 157.

14. **Covenant of title—action on.** In an action on a covenant of warranty in a deed of land, brought against the warrantor, after a judgment of eviction against the warrantee, the warrantor is not concluded from showing title in himself, unless he had due notice of the ejectment suit. 1869. *Somers v. Schmidt* (24 Wis. 417), I, 191.

15. — To have the effect of depriving the warrantor of the right to show title, the notice should be from the warrantee, should be unequivocal, certain and explicit, should request the warrantor to defend the title, and should be given in time to enable him to prepare for such defense. *Id.*

16. — Knowledge of the action and a notice to attend the trial is not enough to work an estoppel. *Id.*

17. **Action of parties.** Tenants in common have several freeholds and are not obliged to join in an action against their grantor for breach of covenant of warranty in his deed. 1871. *Lamb v. Danforth* (59 Me. 323), VIII, 426.

18. — An action on a covenant against incumbrances broken during the life time of the ancestors should be brought by the administrator, not the heir. 1870. *Frink v. Bellis* (33 Ind. 135), V, 193.

19. **Action of covenant for rent by lessor against lessee, on a lease by deed-poll, signed and sealed by the lessor only, and which the lessee had accepted and occupied under.** *Held*, that the action would not lie. 1873. *Johnsons v. Muzzy* (45 Vt. 419), XII, 214.

See DAMAGES; LANDLORD AND TENANT.

COVENANTS IN RESTRAINT OF TRADE—*See CONTRACTS.*

COVERTURE—*See MARRIAGE.*

CRIMINAL LAW.

- I. GENERALLY.
- II. INDIOTMENT.
- III. DEFENSES.
- IV. TRIAL.
- V. VERDICT, JUDGMENT AND SENTENCE.
- VI. EVIDENCE.
- VII. SPECIFIC OFFENSES.

- 1. *Arson.*
- 2. *Burglary.*
- 3. *False pretenses.*
- 4. *Homicide.*
- 5. *Illegal voting.*
- 6. *Larceny.*
- 7. *Perjury.*
- 8. *Profane swearing.*
- 9. *Rape.*
- 10. *Receiving stolen goods.*
- 11. *Robbery.*

I. GENERALLY.

1. *Attempt to commit crime.* Whenever the law makes one step toward the accomplishment of an unlawful object, with the intent of accomplishing it, criminal, the person taking that step with that intent, and capable of doing every act on his part to accomplish that object, cannot protect himself by showing that by reason of some fact unknown at the time to him, it could not have been carried into effect. 1871. *Hamilton v. State* (36 Ind. 280), X, 22.

2. — Thus the indictment charged the prisoner with assault with intent to take from G. H. J. a \$5 bill. *Held*, that a conviction might be had, notwithstanding it appeared that G. H. J. did not have a \$5 bill in his possession at the time of the assault. *Ib.*

3. So where the evidence on a trial for assault, with intent to murder, tended to show that the accused presented a loaded gun and snapped it three times, but there was no cap on it, the court charged the jury that the absence of the cap would not avail the accused if he supposed it was on the gun, but the jury must be satisfied, beyond all reasonable doubt, that he did not know there was no cap on the gun. *Held*, correct. 1871. *Mullen v. State* (45 Ala. 48), VI, 691.

4. — In assault with intent to murder, assuming the necessary intent to exist, the act performed must have some adaptation to accomplish the particular thing intended; but this adaptation need only be apparent, not perfect. *Ib.*

5. *Arrest without warrant.* A constable or police officer is not bound to procure a warrant, before arresting a person whom he has probable cause to believe guilty of a felony, even though there may be no reason to fear the escape of such person in consequence of the delay in procuring the warrant. 1865. *Wade v. Chaffee* (8 R. I. 224), V, 572, and *note*, 574. See ARREST.

6. **Jurisdiction.** Where a complaint before a police court charges the larceny of goods of sufficient value to make it an offense, the *maximum* punishment of which is greater than a police court has power to impose, such court cannot go on and try the cause and impose a penalty within its jurisdiction. 1870. *State v. Dolby* (49 N. H. 483), VI, 588.

7. — The allegation of value in such a complaint governs the question of jurisdiction, and not the value as found at the trial; and the defect cannot be remedied by amendment in an appellate court. *Ib.*

8. **Penalty.** When a penal statute provides that the penalty may be recovered by indictment or civil action, one moiety to go to the State and the other to the prosecutor, it must appear of record who the prosecutor is in order to entitle him to his share of the penalty, otherwise the whole penalty goes to the State. 1870. *State v. Smith* (49 N. H. 155), VI, 480.

9. **Escape evidence of guilt.** On the trial of a prisoner indicted for murder, after the case had been given to the jury, and while the jury were deliberating, the prisoner escaped. The jury disagreed; the prisoner was re-arrested and again brought to trial on the same indictment. *Held*, evidence of guilt, though not conclusive. 1871. *Murrell v. The State* (46 Ala. 89), VII, 592.

II. INDICTMENT.

10. **Grand jury.** A judge cannot require a grand jury to have witnesses examined publicly. 1873. *State v. Branch* (68 N. C. 186), XII, 633.

11. **Information.** A constitutional provision that no person shall be held to answer for the criminal offense "unless upon presentment or indictment of a grand jury" was made to read "without due process of law." *Held*, that a statute giving courts jurisdiction of felonies upon information was valid. 1872. *Rowan v. State* (80 Wis. 129), XI, 559.

12. **"Willfully and maliciously."** The statute made the "willfully and maliciously" doing a certain act criminal. An indictment, under the statute, charged that the defendant did the act "unlawfully and maliciously." *Held*, that the indictment was bad. 1872. *State v. Hussey* (60 Me. 410), XI, 309.

13. — Under an indictment, alleging that the accused "feloniously, willfully, and of his malice aforethought, did kill and murder," the defendant may be convicted of murder in the first degree upon proof of murder by a deliberate and premeditated killing. *DOE, J., and SMITH, J., dissenting.* 1870. *State v. Pike* (49 N. H. 899), VI, 533.

14. **Information for larceny of "one hundred and thirty-five dollars of the property, goods and chattels" of C.** *Held*, bad for uncertainty. 1873. *Merwin v. People* (26 Mich. 298), XII, 814.

15. **Concluding words — waiver by prisoner.** The constitution of West Virginia provides that indictments shall conclude "against the peace and dignity of the State of West Virginia." *Held* (1) that an indictment concluding "against the peace and dignity of the State of West Virginia was insufficient, a literal compliance with the constitutional requirement being necessary; and (2), that a prisoner, by failing to demur or to move to quash, or in arrest of

judgment, could not be deemed to have waived all objections to an indictment thus defective, and he was not precluded from making the objection on appeal, the right being a constitutional one. 1870. *Lemons v. The State* (4 W. Va. 755), VI, 298.

16. Neither the indorsements upon a check, nor a revenue stamp attached thereto, form any part of the instrument; and an omission to set them forth in an indictment for forging and uttering the check constitutes no variance. 1878. *Miller v. The People* (52 N. Y. 804), XI, 706; *State v. Mott* (16 Minn. 472), X, 152, and *note*, 154.

III. DEFENSES.

17. **Once in jeopardy.** Under an indictment for murder, the defendant plead not guilty, issue was joined, a jury impaneled, the witnesses sworn, and the case stated to the jury by counsel for both defendant and the State. At this stage of the proceedings, the prosecuting attorney suggested to the court a variance between the date on which the murder was alleged in the indictment to have been committed, and the date alleged in the original affidavit; whereupon the court dismissed the indictment. *Held*, that the dismissal of the indictment operated as an acquittal of defendant, and that to a second indictment a plea that he had been "once before put in jeopardy of life for the same offense" was good. 1870. *Lee v. The State* (26 Ark. 280), VII, 611.

18. **Once in jeopardy—plea of upon new trial.** Defendant was tried upon an indictment for murder, and was found "not guilty of murder, but guilty of manslaughter in the second degree." Upon a new trial upon the same indictment, granted upon his own motions, *held*, that he could not be convicted of murder. 1872. *State v. Martin* (30 Wis. 216), XI, 567.

19. — A statute provided that "the granting of a new trial places the parties in the same position as if no trial had been had." Defendant was convicted of manslaughter, on an information charging murder; and a new trial was granted on his own motion. *Held*, that the defendant had waived the constitutional safeguard against being twice put in jeopardy for the same offense, and that on the second trial he could be convicted of murder. 1871. *State v. McCord* (8 Kans. 232), XII, 469; *see contra, note*, 473.

20. **Former acquittal.** The discharge of the jury impaneled in a criminal case, without the consent of the defendant, because, after mature deliberation, they are unable to agree on a verdict, is not an acquittal of the defendant, and does not entitle him to immunity from further prosecution for the same offense. 1871. *Ex parte McLaughlin* (41 Cal. 211), X, 272.

21. **Neither an acquittal upon an indictment for larceny, nor a conviction upon an indictment for receiving stolen goods, is a bar to a subsequent indictment, charging the same respondent with being an accessory before the fact to the stealing of the same goods.** 1869. *State v. Larkin* (49 N. H. 36), VI, 456.

22. **Self defense.** Where one's life has been repeatedly threatened by an enemy, a desperate and lawless man, an actual attempt been made to assassinate him, and the members of his family been informed by such enemy that he is to be killed on sight, he may lawfully arm himself to resist the threat.

ened attack; he may leave his home for the transaction of his legitimate business, or for any lawful and proper purpose, and if, on such occasion, he casually meets his enemy, having reason to believe him to be armed and ready to execute his murderous intentions, and he does believe, and from the threats, the previous assault, the character of the man and the circumstances attending the meeting, he has reason to believe that the presence of his enemy puts his life in imminent peril, and that he can secure his personal safety in no other way than to kill him, he is not obliged to wait until he is actually assailed. 1871. *Bohannon v. Commonwealth* (8 Bush. [Ky.], 481), VIII, 474.

23. — On the trial of an indictment for homicide, where the facts proved by the prosecution show that the defendant claimed to do the act resulting in death in self-defense, the burden of proof rests upon the prosecution to show, beyond reasonable doubt, that the act was criminal. 1873. *State v. Patterson* (45 Vt. 308), XII, 200.

24. A man's house is his castle only in the respect that it is sacred for the protection of his person and family. An assault on the house can be lawfully resisted to the extent of using deadly weapons, only in case the assault is made with the intent either of taking the life of the inmate, or of doing him great bodily harm, and such resistance is necessary to prevent such crime; or in case the inmate has reason to believe from the circumstances, and, in fact, does believe, that it is necessary to prevent the commission of such crime. 1878. *State v. Patterson* (45 Vt. 308), XII, 200, and *note*, 212.

25. Drunkenness. The voluntary drunkenness of a murderer neither excuses the crime nor mitigates the punishment. The rule is, that one in a state of voluntary intoxication is subject to the same rule of conduct, and to the same rules and principles of law, that a sober man is; and that where a provocation is offered, and the one offering it is killed, if it mitigates the offense of the man drunk, it should also mitigate the offense of the man sober. 1871. *Shannahan v. Commonwealth* (8 Bush. [Ky.], 463), VIII, 465.

26. Insanity. On the trial of an indictment for murder, the jury were instructed that, if the defendant killed his wife in a manner that would be criminal and unlawful if the defendant were sane, the verdict should be "not guilty by reason of insanity," if the killing was the offspring or product of mental disease in the defendant. *Held* correct. 1871. *State v. Jones* (50 N. H. 369), IX, 242.

27. The test of responsibility for criminal acts, where unsoundness of mind is set up as a defense, is the capacity of the defendant to distinguish between right and wrong, at the time of and with respect to the act which is the subject of the inquiry. 1878. *Flanagan v. The People* (52 N. Y. 467), XI, 781.

28. Neglect of wounds. If death ensues from a wound given in malice but not in its nature mortal, but from which, being neglected or mismanaged, the party dies, this will not excuse the prisoner who gave it, but he will be held guilty of the murder, unless he can make it clearly appear that the maltreatment of the wound, or the medicine administered to the patient, or his own misconduct, and not the wound itself, was the sole cause of his death. 1871. *State v. Morphy* (33 Iowa, 270), XI, 122, and *note*, 125.

IV. TRIAL.

29. Shackles. A prisoner is entitled to appear for trial, upon his own plea of not guilty, free from all manner of shackles or bonds, unless there is danger of his escape. 1871. *People v. Harrington* (43 Cal. 165), X, 296.

30. Impaneling jury. When the name of a juror is drawn in making up the jury for a murder trial, it is the right of the accused to have him put upon the jury or challenged by the State, although, since such juror was summoned, he has been convicted of an assault, and at the time he is drawn is confined in the county jail. The court cannot discharge such a juror of its own motion. 1871. *Boggs v. State* (45 Ala. 80), VI, 689.

31. — Whether a juror is indifferent, and whether a confession was made in consequence of inducements, are questions of fact to be decided by the court at the trial, and that decision is final. 1870. *State v. Pike* (49 N. H. 899), VI, 583.

32. Polling jury. The consent of the defendant in a criminal trial to have a sealed verdict returned is no waiver of his right to have the jury polled. 1871. *Stewart v. People* (23 Mich. 63), IX, 78.

33. Separation of jury. On the trial of an information for murder, which lasted through five days, the jury was permitted to separate for meals and at night and during one Sunday. The defendant was convicted of manslaughter. *Held*, that in the absence of proof that this separation of the jury worked no harm to the defendant, the verdict was void and should be set aside, and a new trial granted. 1872. *Rowan v. State* (80 Wis. 129), XI, 559.

34. Merger. In offenses of an equal grade there can be no merger, and where the facts will make out a case under more than one statute, the State has a right to elect under which one it will proceed. 1871. *Hamilton v. State* (36 Ind. 280), X, 22.

35. Nolle prosequi. A prosecuting officer has the power, *virtute officii*, to enter a *nolle prosequi* in ordinary indictments; and this power may be exercised before a jury is impaneled or while the case is on trial, with the consent of the respondent, or after a verdict is rendered against him. The exercise of this power being discretionary on the part of the prosecuting officer, the court has no right to interfere, after a *nolle prosequi* has been entered, and allow the complainant to appear and prosecute the indictment. 1870. *State v. Smith* (49 N. H. 155), VI, 480.

V. VERDICT, JUDGMENT AND SENTENCE.

36. When verdict must specify degree. Upon the trial of an indictment for murder not charging any particular degree, the jury returned a verdict of "guilty," specifying no degree. The statute divided murder into two degrees. *Held*, that the verdict was bad, and that no judgment could be rendered on it. 1872. *Hogan v. State* (80 Wis. 428), XI, 575.

37. It is error not to ask the defendant, in a case of felony, why sentence should not be passed upon him, and that this was done must appear from the judgment entry. 1871. *Mullen v. State* (45 Ala. 43), VI, 691.

38. Sentence for consecutive terms. Where a prisoner has been convicted of several offenses, the court may give judgment upon each one of them; and, in doing so, may lawfully direct that the term of imprisonment for one shall commence at the expiration of that for another, and so on until all the terms have expired. 1869. *Petition of McCormick* (24 Wis. 492), I, 197.

39. Distinct sentences under several counts. An indictment contained two counts. The first charged the defendant with breaking and entering a store-house; the second charged him with stealing the goods. He was found guilty under both counts, and the judge imposed a distinct sentence on each count. *Held*, not erroneous. 1871. *Commonwealth v. Birdsall* (69 Penn. St. 482), VIII, 283.

40. Sentence — power of court to revise. Where a prisoner has been convicted and sentenced, and duly committed in pursuance of the sentence, the power of the court to revise or change the sentence is at an end. 1869. *Brown v. Rice* (57 Me. 55), II, 11.

VI. EVIDENCE.

41. Of threats. On the trial of an indictment for murder, evidence of threats made by the deceased against the prisoner is admissible, even though such threats were unknown to the prisoner at the time of the homicide. 1871. *Holler v. State* (87 Ind. 57), X, 74.

42. Of character. On a trial of an indictment for murder, under a statute dividing murder into two degrees and requiring the jury to pass upon the guilt or innocence of the accused, and also, on conviction, to find by the verdict whether it be murder in the first or second degree, and to determine the character, the extent and severity of the punishment to be inflicted. *Held*, that evidence of the general bad character of the deceased as a turbulent, blood-thirsty, revengeful, dangerous man, is admissible to enable the jury to determine the degree of the offense, and the character and measure of the punishment. 1872. *Fields v. State* (47 Ala. 603), XI, 771, and *note*, 776.

43. — Where the general good character of the accused as a peaceable man is proved, the following is a correct charge, to wit: "If the prisoner be proved of good character as a man of peace, the law says that such good character may be sufficient to create or generate a reasonable doubt of his guilt, although no such doubt would have existed but for such good character;" and if asked in writing, it is error to refuse it. *Id.*

VII. SPECIFIC OFFENSES.

1. Arson.

44. Arson. A husband, living with his wife, and having a rightful possession jointly with her of a dwelling-house, which she owns and they both occupy, is not guilty of arson, by the common law, in burning such dwelling-house; and this rule is not changed by a statute securing to the wife her separate property. 1872. *Snyder v. People* (36 Mich. 106), XII, 802.

2. *Burglary.*

45. **Burglary.** Where a window was left open from a quarter of an inch to an inch, and a person, with intent to steal, effected an entrance to the house by raising the sash higher, *held*, not such a breaking or entering as constitutes burglary. 1870. *Commonwealth v. Strupney* (105 Mass. 588), VII, 556.

3. *False pretenses.*

46. **False pretense.** A false promise will not sustain a charge of crime or false pretense. It must be a representation in fact that is false, and this must be relied on by the party defrauded. But if a pretense and promise blend together, and jointly act upon the defrauded person, whereby he is induced to give faith to the pretense, the case is within a statute making the obtaining of money, etc., by false pretenses a crime. 1869. *State v. Dowe* (27 Iowa, 273), I, 271.

47. — When D. pretended to H. that he had come to pay a debt due H., whereby H. was induced to make and deliver to D. a receipt, which D. immediately took and carried away without payment or consent of H. *Held*, within the statute. *Ib.*

4. *Homicide.*

48. **Homicide—justification—burden of proof.** In every case of homicide the people must prove the *corpus delicti* beyond a reasonable doubt, and if the prisoner claims a justification, he must take upon himself the burden of satisfying the jury by a *preponderance of evidence*. 1870. *People v. Schryver* (42 N. Y. 1), I, 480.

49. — But where the evidence introduced by the people tends to show that the homicide was justifiable, the prisoner may avail himself of that evidence, and has a right, without introducing affirmative proof, to have the question of justification submitted to the jury. *Ib.* See *ante*, pl. 23.

50. — On the trial of an indictment for manslaughter, the court charged the jury that it was for the prisoner to satisfy the jury, "beyond a reasonable doubt," that the homicide was justifiable. *Held*, to be error. *Ib.*

51. **Manslaughter.** An indictment for manslaughter, by striking the deceased upon her head and throwing her on the floor, is sustained by proof that defendant struck her on the head, and that she fell upon the floor and was killed by striking on a chair in her fall. 1871. *Commonwealth v. McAfee* (108 Mass. 458), XI, 888.

52. — **Murder.** The defendant was indicted for murder under a statute declaring that "all murder committed by poison, starving, torture or other deliberate and premeditated killing, or committed in perpetuating robbery, is murder of the first degree." *Held*, that murder committed in perpetrating a robbery was murder of the first degree, although not committed with a "deliberate and premeditated" design to kill. 1870. *State v. Pike* (49 N. H. 899), VI, 538.

53. — On an indictment for murder, where the plea of self-defense was relied upon, the jury were instructed that "by the term malice aforethought,

is meant a predetermination to kill, however suddenly or recently formed in the mind of the person killing, before the fatal act, so that the determination actually exists in the mind before and at the time of the killing, and be not prompted alone by the first transport of passion and under great provocation." *Held*, error, on the ground that the instructions under the plea of self-defense was in effect a determination by the court that killing in necessary self-defense may be killing with malice aforethought, and, therefore, legally murder. A killing, to constitute murder, must be done unlawfully, and unless it be unlawful, it cannot have been done with malice aforethought, although it may have been predetermined. 1871. *Bohannon v. Commonwealth* (8 Bush. [Ky.] 481), VIII, 474.

5. *Illegal voting.*

54. *Illegal voting.* Defendant was indicted for voting at an election, "not having the legal qualifications of a voter." *Held*, that the indictment was defective, in not specifying the qualification, or qualifications which defendant lacked to make him a legal voter. 1871. *Quinn v. The State* (85 Ind. 485), IX, 754.

6. *Larceny.*

55. *Larceny.* To constitute the offense of larceny, there must be a taking or severance of the goods from the possession of the owner. But a temporary possession by the thief, though it be but momentary, is sufficient. 1872. *Harri-son v. People* (50 N. Y. 518), X, 517.

56. — On a trial for larceny from the person, the evidence was that the prisoner put his hand into the coat pocket of the complainant, seized the pocket-book of the latter, containing money and securities, and lifted it about three inches from the bottom of the pocket, when possession was regained by the owner. *Held*, that this was a sufficient taking and possession of the property by the thief, to constitute the offense charged. *Id.*

57. — A statute providing that one who should bring into the State property stolen in another State shall be guilty of larceny, is constitutional. 1871. *People v. Williams* (24 Mich. 156), IX, 119.

58. — Taking a horse trespassing on the taker's land, with intent to conceal it, either until the owner shall offer a reward and then to return it and claim the reward, or until the owner may be induced to sell it for less than its value, is larceny. 1870. *Commonwealth v. Mason* (105 Mass. 168), VII, 507, and *note*, 510.

59. *Obtaining property by a trick.* On an indictment for larceny, it appeared that the prisoner and S., who were confederates, met the prosecutor; S. dropped a piece of paper; prisoner picked it up while S. had stepped aside and took from it a five cent coin; S., on returning, received the paper from prisoner, saying that "he would not take ten dollars" for it, and proceeded to bet that there was a five cent coin in it; prosecutor bet his watch, and the stakes were placed in prisoner's hands, whereupon S. tore open the paper, exhibited a five cent coin, which had been concealed therein, snatched the watch and walked off. *Held*, larceny. 1870. *Defrese v. State* (8 Heisk [Tenn.], 53), VIII, 1.

7. *Perjury.*

60. *Perjury.* Swearing to a false affidavit relative to an application to there-after be made in a State court for naturalization under the laws of the United States is perjury, and indictable in the courts of the State. 1870. *State v. Whittemore* (50 N. H. 245), IX, 196.

61. To make profane swearing a nuisance, the profanity charged must be uttered in the hearing of divers persons; and it must be charged in the bill of indictment, and proved to have been so uttered. The general allegation *ad commune nooumentum* is insufficient. 1878. *State v. Pepper* (68 N. C. 259), XII, 637.

62. — *Hence*, where the indictment is alleged that the defendant "in the public street of the town of L., with force and arms, and to the great displeasure of Almighty God, and the common nuisance of all good citizens of the State then and there assembled, did for a long time, to wit: For the space of twelve seconds, profanely curse and swear, and take the name of Almighty God in vain, to the common nuisance," etc. *Held*, that no criminal offense was therein charged. *Id.*

8. *Rape.*

63. *Rape.* Where a man has carnal intercourse with a woman (not his wife), without her consent, while she is, as he knows, wholly insensible, he is guilty of rape. 1870. *Commonwealth v. Burke* (105 Mass. 376), VII, 531, and *note*, 535.

64. — On a trial of indictment for rape, the jury were instructed that they might convict if they found that defendant procured the woman to have connection with him by fraudulent representations, which she believed, that it was a necessary part of his medical treatment of her. *Held*, error, for the reason that it did not recognize force as an essential element of the crime. 1872. *Don Moran v. People* (35 Mich. 356), XII, 283, and *note*, 290.

9. *Receiving stolen goods.*

65. If a person receives stolen goods, knowing them to be such, not for the purpose of making them his own, or of deriving profit from them, but simply to aid the thief in carrying them off, he is guilty of the crime of receiving stolen goods, knowing them to have been stolen. 1878. *State v. Rushing* (69 N. C. 29), XII, 641.

10. *Robbery.*

66. *Robbery.* In an indictment for robbery, the property may be laid as belonging either to the actual owner or to the person robbed. 1872. *Brooks v. People* (49 N. Y. 436), X, 393.

CUSTOM AND USAGE.

To permit usage to govern and modify the law in relation to the dealings of parties, it must be uniform, certain and sufficiently notorious to warrant the legal presumption that the parties contracted with reference to it. 1869. *Citizens' Bank of Baltimore v. Grafflin* (31 Md. 507), I, 66. *See* CARRIERS; EVIDENCE.

CY-PRES — *See* WILL.

DAM.

One who builds a dam across a stream is bound so to construct it that it will resist not only ordinary freshets, but also such extraordinary floods as may be reasonably anticipated. 1871. *Gray v. Harris* (107 Mass. 492), IX, 61.

See FISHWAY.

DAMAGES.

I IN ACTIONS FOR PERSONAL INJURIES.

1. *Miscellaneous.*
2. *In actions for breach of promise of marriage — See MARRIAGE.*
3. *Slander and libel — See SLANDER AND LIBEL.*

II. IN ACTIONS FOR INJURIES TO PROPERTY.

1. *Miscellaneous.*
2. *In actions against carriers — See CARRIERS.*
3. *In actions against telegraph companies — See TELEGRAPH.*

III. IN ACTIONS ON CONTRACTS.

IV. IN ACTIONS ON COVENANT.

I. IN ACTIONS FOR PERSONAL INJURIES.

1. *Miscellaneous.*

1. **Character and pain of mind.** In an action for negligent injury to person, the jury in estimating damages cannot consider the "character" of the plaintiff nor his pain of mind aside and distinct from his bodily suffering. 1870. *Johnson v. Wells* (6 Nev. 224), III, 245.

2. — In an action for injuries sustained by plaintiff from a defective bridge which defendants were bound to keep in repair, *held*, that the jury might properly consider plaintiff's pain of mind and body. 1870. *Pennsylvania and Ohio Canal Company v. Graham* (63 Penn. St. 290), III, 549.

3. **Exemplary against carrier.** In an action against a railroad company to recover for injuries sustained from an accident, the court charged the jury that if they found that the accident was caused by the gross negligence of defendants, they might in their discretion give exemplary damages. *Held correct.* 1869. *Taylor v. Grand Trunk Ry. Co.* (48 N. H. 304), II, 229.

4. — A corporation is liable to punitive or exemplary damages for the wrongful acts of its agents in the scope of their authority, the same as would be an individual who had done the act. 1869. *Atlantic and Great Western Railway Co. v. Dunn* (19 Ohio St. 162), II, 382.

5. **Against railroad for assault by servant: exemplary.** Plaintiff, a passenger in defendants' railway car, was assaulted and insulted by defendants' servant. *Held*, that plaintiff could recover of defendants exemplary damages; and the defendants having retained the servant in their employ after notice of his conduct, the court refused to set aside as excessive a verdict for \$4,850. 1869. *Goddard v. Grand Trunk Ry. Co.* (57 Me. 202), II, 39.

6. **From defect in street.** In an action against a city for injuries occasioned by a defect in a sidewalk, the damages should not be vindictive or punitive, but only compensatory. 1869. *City of Chicago v. Langlass* (52 Ill. 256), IV, 608.

7. — Under the statutes of New Hampshire "towns are made liable for damages happening to any person, his team or carriage, traveling upon a highway, or bridge thereon, by reason of any obstruction, defect, insufficiency or want of repair, which renders it unsuitable for the travel thereon." In an action, under the statute, by a traveler, for damages resulting from the want of a sufficient railing upon the sides of a bridge in a public highway, *held*, that the plaintiff was entitled to recover, not only for injuries to his person, clothing and team, including the animals, carriage and load thereon, but also for the loss of money carried in his pockets, and belonging to another; but that no exemplary or vindictive damages should be awarded. 1870. *Woodman v. Nottingham* (49 N. H. 387), VI, 526.

8. — In an action against a city to recover for injuries sustained from a defect in the street, *held*, that if the injuries were permanent the party could recover prospective as well as past damages, not exceeding the amount claimed in the complaint. 1870. *Weisenberg v. City of Appleton* (26 Wis. 56), VII, 89.

9. **Mitigation of damages — physician.** In an action to recover for injuries occasioned by the negligence of defendant, *held*, that plaintiff was only bound to use reasonable and ordinary care in the selection of a physician, and that the damages could not be reduced because the most skillful medical attendance was not secured. 1871. *Collins v. City of Council Bluffs* (82 Iowa, 324), VII, 200.

10. **In trespass for assault and battery,** the fact that the defendant has been tried in a criminal proceeding for the same act is no bar to, or mitigation of, exemplary damages; but plaintiff's expenses in the suit, not taxable costs, are not proper items of such damages. 1878. *Hoadley v. Watson* (45 Vt. 289), XII, and *note*, 199.

11. **In an action for causing the death of a child** about three years old, proof of special pecuniary damages is not necessary to maintain the action or to warrant the jury in finding more than nominal damages. It is within the province of the jury in such a case to form an estimate of the damages with reference to the pecuniary injury, present or prospective, resulting to the persons for whose benefit the action is brought. 1872. *Ihl v. Forty-second Street, etc., R. R. Co.* (47 N. Y. 817), VII, 450.

12. **In an action to recover for injuries** occasioned to plaintiff through the negligence of the defendant, evidence tending to show permanent injury as affecting the amount of damages is properly to be submitted to the jury. 1870. *Kerr v. Forgue* (54 Ill. 482), V, 146.

13. **Insurance money in reduction of.** In an action against a town to recover for personal injuries sustained in consequence of defects in a highway, the town is not entitled to have the proceeds of an accident insurance policy of plaintiff deducted from the amount of damages. 1871. *Harding v. Town of Townshend* (43 Vt. 536), V, 804. See, also, *Clark v. Wilson* (103 Mass. 219), IV, 532.

II. IN ACTIONS FOR INJURIES TO PROPERTY.

1. Miscellaneous.

14. **Conversion.** In an action to recover for the conversion of wheat, the defendant is not entitled to prove the value of his own labor in harvesting and threshing the crop, for the purpose of reducing the damages. 1870. *Ellis v. Wire* (88 Ind. 127), V, 189.

15. — In an action of trover for the conversion of stock, the measure of damages is the value of the stock at the time of the conversion, with interest from that time until the trial. 1870. *Sturges v. Keith* (57 Ill. 451), XI, 28, and note, 85.

16. **In actions for coin.** In trover against a bank after its re-organization as a national bank, for the value of special deposits in coin made prior thereto, *held*, that the measure of damage was the value of the coin at the date of its conversion with interest thereon. 1870. *Coffey v. National Bank* (46 Mo. 140), II, 488.

17. — In an action against an innkeeper for the loss of gold coin, while plaintiff was his guest in 1863, *held*, that the judgment should be for gold, not for its value in currency at the time of the loss. 1871. *Kellogg v. Sweeney* (46 N. Y. 291), VII, 338.

18. **For refusal to deliver stock.** In an action against a corporation for a wrongful refusal to deliver stock, the measure of damage is the value of the stock at the time of the demand, together with after-accrued dividends. 1871. *Baltimore Ry. Co. v. Sewell* (35 Md. 338), VI, 402.

19. **For property unlawfully replevied.** One who recovered possession of lands by ejectment, replevied the crops grown and harvested before the judgment. In an action by the one ejected to recover their value, *held*, that the measure of damage was the highest market value within a reasonable time after the property was taken, with interest computed from the time such value was estimated. 1870. *Page v. Fowler* (39 Cal. 412), II, 462.

20. **Driftwood.** One whose property has been thrown, by a flood, upon the land of another, is not liable for damages, unless he reclaim the property. 1870. *Sheldon v. Sherman* (42 N. Y. 484), I, 569. See, also, *Liocey v. Philadelphia* (64 Penn. St. 106), III, 578.

21. **Insurance money in reduction of.** Plaintiff's buildings were burnt by the negligence of defendant. *Held*, that plaintiff was entitled to recover their entire value, notwithstanding the fact that the insurer of the buildings had paid him the amount of the insurance. 1872. *Weber v. Morris & Essex R. R. Co.* (35 N. J. 409), X, 253. See, also, *Clark v. Wilson* (103 Mass. 219), IV, 532.

22. **For neglect of common carrier.** A common carrier neglected to forward promptly goods delivered with the notice that they were sold if forwarded at once. The goods depreciated in value, and the purchaser refused to receive them. *Held*, that the plaintiff could recover damages for the depreciation in their market value and also for loss of his chance to sell. 1869. *Deming v. Grand Trunk Railway Co.* (48 N. H. 455), II, 267.

23. — The measure of damages against a carrier for neglect to transport merchandise within a reasonable time, and its market value has fallen, is the difference in its value at the place of delivery at the time it ought to have been delivered and at the time of its actual delivery. 1871. *Ward v. N. Y. Cent. R. R. Co.* (47 N. Y. 29) VII, 405.

III. IN ACTIONS ON CONTRACTS.

24. When the vendor of land acts in bad faith, the measure of damages for breach of contract is the value of the land at the time of the breach; but when he acts in good faith, the measure of damages is the consideration money and interest with, sometimes, the costs of investigating the title. 1870. *Hannmond v. Hannin* (21 Mich. 374), IV, 490.

25. — Where a vendee refuses to complete a contract, for the purchase of real estate, the measure of damages to the vendor is the difference between the contract price and the value of the real estate when the vendee refused to complete. 1871. *Griswold v. Sabin* (51 N. H. 187), XII, 76.

26. In an action on a warranty in a sale of stock, that it would be "worth \$700 market value, within one year from date," the plaintiff contended that the measure of damages was the difference between \$700 and the market value at the end of the year; defendant contended that the measure of damages was the difference between \$700 and the highest price the stock reached in market during the year. *Held*, that as between the two measures, defendant's was correct. 1870. *Woodward v. Powers* (105 Mass. 108), VII, 503.

27. On contract to manufacture patented machines. The appellants agreed to manufacture for appellee a number of machines at a fixed price and failed to fulfill their contract. *Held*, that the measure of damages for such failure was the difference between the market value of such machines at the time they were to be delivered and the price to be paid for their manufacture, and that the circumstance that the machines were patented, and the patent right held by the appellee, did not alter such measure. 1871. *Fink v. Tatman* (36 Ind. 259), X, 19.

28. Contract to deliver logs. In an action to recover for a breach of a contract to deliver logs to be sawed at plaintiff's mill, *held*, that the measure of damage was the contract price of sawing, less the cost of doing the work, in labor in wear and tear of machinery, in time of use of machinery and value of superintendence. 1870. *Dunn v. Johnson* (33 Ind. 54), V, 177.

29. When performance was prevented by defendant. In an action for damages on a contract, which plaintiff was prevented from completing through the fault of defendant, the measure of damages is, not the price agreed to be paid in full performance, but recompense for the part performed, together with indemnity for the loss to plaintiff in respect to the part unperformed. 1870. *Friedlander v. Pugh* (43 Miss. 111), V, 478.

30. To deliver premises. In an action to recover damages for the breach of an agreement to deliver possession of premises to the purchaser upon a fixed day, the jury may consider in their assessment all such consequential damages as are the fair, legal and natural result, under all the circumstances, of the

breach of the defendant's agreement. 1869. *Moore v. Davis* (49 N. H. 45), VI, 460.

IV. IN ACTIONS ON COVENANTS.

31. **Of quiet enjoyment.** The measure of damage for a breach of covenant for quiet enjoyment is the value of the unexpired term of the lease at the time of the eviction, over and above the rent reserved by the terms of the lease. 1870. *Mack v. Patchin* (42 N. Y. 167), I, 506.

32. **Of title.** The measure of damage in an action on a covenant of title, after eviction, is the purchase-money and interest; but where the covenantee has purchased the paramount title, it is the sum actually and in good faith paid therefor and the amount expended in defending his possession, provided such damages shall not exceed the purchase-money and interest. 1870. *McGary v. Hastings* (39 Cal. 360), II, 458.

33. — Rule of damage on the taking of land for the construction of a railroad, *see* RAILROAD.

See CONSPIRACY; EMINENT DOMAIN; INSURANCE (Marine); OFFICER; REPLEVIN; TRADE-MARK.

DEBTOR AND CREDITOR.

Where a debtor, with the assent of certain of his creditors, placed his personal property in the hands of one of them, with instructions to sell it, and pay himself and such other creditors out of the proceeds, *held*, that the creditors, for whose benefit the property was to be applied, obtained a lien upon it and its proceeds superior to any which a general creditor could acquire by the subsequent levy of an attachment thereon. 1870. *Handley v. Pfister* (39 Cal. 288), II, 449.

See BANKRUPTCY; INSOLVENT LAW.

DECEIT — *See* FRAUD.

DEED — *See* CONVEYANCE; JURY; RATIFICATION.

DEFAMATION — *See* SLANDER AND LIBEL.

DELIVERY.

I. BY CARRIERS — *See* CARRIER.

II. OF DEED — *See* CONVEYANCE.

III. OF PROPERTY — *See* SALE.

DEPOSIT — *See* BANK AND BANKING.

DERELICTION — *See* ACCRETION.

DEVISE — *See* WILL.

DISSEISIN.

An occupation of premises for years, by means of a permanent structure although by mistake as to the true boundary line, is in legal effect a disseisin. 1870. *Proprietors v. Nashua, etc., R. R.* (104 Mass. 1), VI, 181.

DISTRESS.

1. An action will not lie for distraining for more rent than is due. 1873. *Hamilton v. Windolf* (86 Md. 301), XI, 491.

2. The goods of a principal in the store of his commission merchant for sale are not liable to distress for rent due by the latter to the landlord of the premises. 1873. *McCreery v. Claffin* (87 Md. 435), XI, 542.

DIVIDEND.

1. A sale of shares of stock in a railroad company carries with it the dividends declared by the company, when they are to be paid at a day subsequent to the transfer of the stock. Therefore, when the North Carolina Railroad Company declared a dividend on the stock in said company, on the 16th day of February, 1870, to be paid on the first days of April and July thereafter, and the owner of certain shares of such stock sold and transferred the same on the 17th day of February. *Held*, that the purchaser of said shares of stock acquired the dividends, as well as the stock. 1873. *Burroughs v. North Carolina R. R. Co.* (69 N. B. 876), XII, 611.

2. "Guaranteed dividends" means only a pledge of the funds lawfully applicable to dividends. 1856. *Taft v. Hartford, etc., R. R. Co.* (8 R. I. 410), V, 575.

See CORPORATION.

DIVORCE — *See* MARRIAGE.

DOGS — *See* ANIMALS.

DOWER — *See* MARRIAGE.

DRIFTWOOD.

The owner of property which, without his fault or negligence, is carried by high water down a stream and deposited upon the lands of another, will not be liable for any damage occasioned by it, unless he reclaim it, in which event he must make good the damages done. 1870. *Sheldon v. Sherman* (43 N. Y. 484), I, 569; *Livesey v. Philadelphia* (64 Penn. St. 106), III, 578.

DRUNKENNESS.

I. AS DEFENSE TO NOTE — *See* BILLS AND NOTES.

II. AS EXCUSE FOR CRIME — *See* CRIMINAL LAW.

DURESS.

Of property. Goods requiring special care, and of a perishable nature, were wrongfully taken and kept from the owner thereof by means of a writ of attachment fraudulently obtained, and were rapidly going to destruction, and party in possession refused to surrender the goods on payment of the sum actually due, demanding more than twice that amount, and, in addition thereto, a release from all damages for his wrongful act, and the defendant in the attachment, to obtain possession of his property, paid the sum demanded and executed the release. In an action on the case for wrongfully suing out

the attachment, *held*, (1) that the release could be avoided on the ground of duress; (2) that the party injured was not restricted to an action on the attachment bond, but could not maintain the action on the case; (3) that the declaration need not allege "want of probable cause" in terms, but that it would suffice if such want was substantially alleged. 1870. *Spaids v. Barrett* (57 Ill. 289), XI, 10.

DYING DECLARATION — *See* EVIDENCE.

EASEMENTS.

1. On the severance of two tenements. The rule of law which creates an easement on the severance of two tenements or heritages, by the sale of one of them, is confined to cases where an *apparent* sign of servitude exists, on the part of one of them in favor of the other. 1871. *Butterworth v. Crawford* (16 N. Y. 349), VII, 353.

2. — The owner of two adjoining lots of land, Nos. 83 and 85, dug a vault extending partly into each lot, from which he constructed a drain through lot No. 85 to the street sewer. He conveyed lot No. 85 to defendant by deed, containing a covenant against incumbrances, and afterward conveyed lot No. 83 to plaintiff. Defendant purchased without knowledge of the drain; nor was there any apparent mark or sign of its existence. *Held*, that defendant's lot was not servient; and that he had a right to close up the drain. *Ib*.

3. Of light. The easement and servitude of light may be implied from grant. 1870. *Janes v. Jenkins* (34 Md. 1), VI, 300, and *note*, 306.

4. — By the grant of a lot and all the rights, "privileges, appurtenances and advantages to the same belonging or in anywise appertaining," is passed the easement of light and air as to windows previously opened toward another lot of the grantor; and the existence of the easement and the enjoyment thereof by the grantee is no breach of a special warranty contained in a subsequent deed of the other lot to another grantee. *Ib*.

5. Light and air. The owner of two adjacent lots, having dwelling-houses thereon, conveyed one to the plaintiff and the other to the defendant, by deeds containing covenants of warranty and against incumbrance. The house purchased by plaintiff received light and air through windows opening upon an area on the lot purchased by defendant. The defendant being about to obstruct these windows by building upon and filling up the area, the plaintiff brought suit for an injunction. *Held*, that there was no grant of an easement for light and air implied from the fact that the windows were in use at the time of the conveyance, and were necessary to the convenient enjoyment of the property, and that an injunction could not be granted. 1869. *Mullen v. Stricker* (19 Ohio, 185), II, 379.

6. The owner of one part of a building has no action against the owner of the other part for willfully permitting his part to get out of repair, whereby the plaintiff's part is injured. 1873. *Pierce v. Dyer* (109 Mass. 374), XII, 716.

7. — Nor can the owner of the upper story of a building recover of the owner of the lower story contribution for necessary repairs of roof. 1871. *Ottumwa Lodge v. Lewis* (84 Iowa, 67), XI, 185.

8. Subjacent support. While one person owns the surface and another the underlying minerals, the former has an action against the latter for removing the necessary supports of the surface. 1871. *Jones v. Wagner* (66 Penn. St. 429), V, 385.

9. Over land described in a deed as a street. J., owning lands, on which was a strip called a street, but which was not laid out or dedicated as a public highway, conveyed the same to S., by a conveyance, in which the said strip was mentioned as a boundary and described as "St. Charles street." Subsequently S. conveyed a portion of such lands to the plaintiff, "with all the privileges and appurtenances thereunto belonging," referring to the so-called street, in the deed. The land so sold did not abut or front upon such street, nor was there a right of way by necessity over the land intermediate. *Held*, that the plaintiff did not acquire any right of way over the so-called street. 1870. *Dunson v. The St. Paul Fire Insurance Co.* (15 Minn. 186), II, 109.

10. Agreement to abandon. An agreement made by a lessee for years to abandon an easement belonging to the estate does not bind the reversioner unless he is a party to it, or it is made with his knowledge and acquiescence. 1871. *Glenn v. Davis* (85 Md. 206), VI, 389.

See COVENANT; HIGHWAYS; PARTY WALL; WATER AND WATER-COURSES.

ECCLESIASTICAL LAW.

1. The title to the church property of a divided congregation is in that part, though a minority, which adheres to the ecclesiastical laws, usages and principles of the denomination under which the church was constituted. 1871. *Schnorr's Appeal* (67 Penn. St. 188), V, 415.

2. — The title and use of the property of a divided congregation, and the offices pertaining thereto belong to that portion which adheres to the nomination and conforms to its rules. 1871. *Roski's Appeal* (69 Penn. St. 462), VIII, 275, and *note*, 283.

3. — A classis of the German Reform Church of the United States, sitting as an ecclesiastical court, declared certain offices held by defendant vacant. *Held*, that this decision was binding on the civil courts. *Ib.*

4. Ecclesiastical court. In a suit to enjoin the plaintiffs in error, as an ecclesiastical court, from proceeding with the trial of the defendant for alleged offenses and misconduct as a presbyter, *held*, (1) that the fact that the commission issued by the bishop, appointing persons to investigate the charge and make presentment, was irregularly issued would not affect the jurisdiction of the ecclesiastical court; (2) the ecclesiastical court is the exclusive judge of the sufficiency of the presentment; (3) such court is not bound by the rules of law as to challenge of jurors; (4) where there is no right of property involved except clerical office or salary, the spiritual court is the exclusive judge of its own jurisdiction. 1871. *Chase v. Cheney* (58 Ill. 509), XI, 95.

5. — The rights of pew-owners in church discussed, *arguendo*. 1871. *Kincaid's Appeal* (66 Penn. St. 411), V, 377.

EIGHT HOURS' LAW — *See* CONTRACT.

EJECTMENT.

1. **Crops.** One who recovers land in an action of ejectment is entitled to the crops planted after the commencement of that action. 1839. *McLean v. Bovee* (24 Wis. 295), I, 185.

2. — The owner of lands, who has recovered a judgment of ejectment against persons occupying under a claim of title, is not entitled to the crops grown and harvested by such persons before the judgment. 1870. *Page v. Fowler* (39 Cal. 412), II, 462.

3. **Damages.** When, in such a case, the owner obtained possession of the crops by replevin, *held*, in an action to recover their value, that the measure of damages was the highest market value within a *reasonable* time after the property was taken, with interest computed from the time such value was estimated. *Ib.*

4. **Defense.** A defendant in ejectment cannot set up a mortgage, with which he is not connected, as an outstanding title. 1870. *Woods v. Hilderbrand* (46 Mo. 284), II, 518.

ELECTION.

1. **Residence.** Residence, under the provisions of the State constitution giving to certain persons, who have "resided" in the State and in the election district for specified periods, the right to vote, means that place where the elector makes his permanent or true home, his principal place of business, and his family residence; where he intends to remain indefinitely, and without any present intention to depart, and to which, when he leaves it, he intends to return. 1872. *Fry's Election Case* (71 Penn. St. 302), X, 698.

2. — **Students at a college,** coming to it from other places, for no other purpose than to receive education, and intending to leave after graduating, do not lose their original domicile, nor acquire a new one, so as to become legal voters in the district where the college is situated. *Ib.*

3. **A person born in Canada** of parents of African blood, who were born in Virginia and held there as slaves until they emigrated to Canada, *held*, not entitled to vote as a citizen of the United States without being naturalized. 1872. *People v. Board of Registration* (26 Mich. 51), XII, 297.

4. **Right of residents on lands ceded to the United States to vote.** Under and in pursuance of an act of congress, "The National Asylum for Volunteer Soldiers" was established in Ohio, upon land acquired by the United States, and jurisdiction over which had been ceded by the State to the United States, and contained inmates, some of whom were, and others were not, residents of Ohio at the time of entering. At an election held in the county wherein the asylum was situated, certain of the inmates were allowed to vote. *Held*, that, as the asylum was a "needful building" within the provision allowing the United States to acquire land, and the United States had exclusive jurisdiction

over it, the inmates were not residents of the State, and therefore not entitled to vote. 1869. *Sinks v. Reese* (19 Ohio St. 306), II, 397.

5. **Ballot.** An act required the inspectors of election to place on the back of the ballot of each voter the number opposite his name in the poll-list. *Held*, that the act was unconstitutional and void on the ground that the intent of the constitution is to secure to each voter absolute secrecy. 1871. *Williams v. Stein* (38 Ind. 89), X, 97.

6. **Registry laws or laws prohibiting any person from voting, whose name does not appear on the register, are constitutional.** 1869. *Edmonds v. Banbury* (28 Iowa, 267), IV, 177.

7. **Certificate of prima facie evidence — mandamus.** The relator received from the proper officer a certificate of his election to the office of district clerk of M. county; he subsequently took the oath, gave and filed the bond required by law, and then demanded of the respondent — the former clerk, whose term of office had expired, and who was in possession — the seal, records, books, papers, etc., belonging to said office. The respondent answered that the relator, being a non-resident of the State, was ineligible to the office, and therefore not legally elected. *Held*, that the relator was entitled to a mandamus. 1870. *State v. Sherwood* (15 Minn. 221), II, 116.

8. — A certificate of election is *prima facie* evidence of title, and the court will not go behind it in proceedings for a mandamus. *Ib.*

9. **Where person receiving majority of votes is ineligible.** At an election F. and C. were candidates for an office, for which F. was duly qualified, but for which C. was ineligible by holding an office made incompatible with the former by statute. C. had the majority of votes. *Held*, (1) that C. was not elected; (2) that F. was not elected, in the absence of proof that those who voted for C. did so with notice of his disqualification; (3) that there was no presumption of such notice from the fact that the disqualification was created by a public statute. 1873. *People v. Clute* (50 N. Y. 451), X, 508.

10. — At an election the person receiving the highest number of votes was disqualified. The person who had received the next highest number, and who was qualified, claimed the office. *Held*, that the electors had failed to make a choice, and that he was not entitled to the office. 1873. *Sublett v. Bedwell* (47 Miss. 266), XII, 338, and *note*, 341.

See MANDAMUS.

EMANCIPATION.

A warranty made in 1856, on the sale of slaves, "that the title of said slaves was warranted for the life of said negro slaves," is not broken by the emancipation of the slaves by the government of the United States during the civil war. 1870. *Fitzpatrick v. Hearne* (44 Ala. 171), IV, 128.

EMBLEMENTS.

1. **In ejectment.** One who recovers land in an action of ejectment is entitled to the crops planted after the commencement of the action. 1869. *McLean v. Bovee* (24 Wis. 295), I, 185.

2. — One who recovers a judgment of ejectment against persons occupying under a claim of title is not entitled to the crops (in this case hay) grown and harvested by such person before the judgment. 1870. *Page v. Fowler* (39 Cal. 412), II, 462.

3. What pass by deed. Corn, ripe but standing uncut in the field, passes by deed of the freehold. 1870. *Tripp v. Haseig* (20 Mich. 254), IV, 388.

4. Under parol contract to convey. Plaintiff entered upon defendant's land under a verbal contract of purchase, and sowed crops with consent of defendant. Afterward defendant refused to carry out the contract of sale and ejected plaintiff. Held, that plaintiff was entitled to the crops. 1872. *Harris v. Frink* (49 N. Y. 24), X, 818.

5. — One who is let into possession under a parol contract to purchase is a tenant at will so far as relates to the emblements. *Id.*

EMINENT DOMAIN.

1. Among the reserved State rights is that of eminent domain. Under this power railroads have been built, and the right to exact tolls and charges for their use is a necessary consequence of the power to construct them. This power may be exercised at the discretion of the State. 1869. *Commonwealth v. Erie Ry. Co.* (62 Penn. St. 286), I, 399.

2. In behalf of railroads. The right to exercise the power of eminent domain in behalf of railroads and other improvements of public utility is recognized by all the courts and denied by no one. The right to take private property under this power for public use is conditioned upon making compensation. 1869. *Stewart v. Supervisors* (30 Iowa, 9), I, 238; but see *Hanson v. Vernon* (27 Iowa, 28), I, 215.

3. A railroad company entered without right upon land and erected buildings thereon. Two years afterward it acquired title to the land by eminent domain. Held, that the owner of the land was entitled to compensation for its value with the improvements thereon at the time the proceedings were commenced. 1871. *Graham v. Connersville R. R. Co.* (36 Ind. 463), X, 56.

4. Private roads. The legislature cannot authorize the taking of private property for a private road without the consent of the owner, even if compensation is made therefor. 1869. *Osborn v. Hart* (24 Wis. 59), I, 161.

5. An act authorizing a telegraph company to erect its line upon the right of way of a railroad company, without providing for enforcing payment of damages, is unconstitutional. 1872. *Southwestern R. R. Co. v. Southern, etc., Telegraph Co.* (46 Ga. 48), XII, 585.

See CONSTITUTIONAL LAW.

EQUITY.

A court of equity may, in cases where the party is not entitled to specific performance, grant relief by decreeing the repayment of the money expended on the faith of the contract. 1869. *Green v. Drummond* (31 Md. 71), I, 14

See TITLE.

ESCAPE.

1. Where a jailer allowed a prisoner to go outside of the rooms used as the jail and to take his meals in another part of the same building with the jailer's family, and also to go outside of the building, this was held a voluntary escape, and sufficient to preclude the jailer from recovering on a bond given to him by the town to pay the prison charges of the prisoner. 1869. *Riley v. Whittiker* (49 N. H. 145), VI, 474.

2. — The escape of a prisoner during his trial in an indictment is evidence of guilt, though not conclusive. 1871. *Murrell v. State* (46 Ala. 89), VII, 592.

ESCHEAT.

Where the title of A., an alien, to lands in Michigan territory was confirmed by act of congress of 1807, and he died, leaving a child, born in England but not naturalized, the lands escheated to the territory, and finally to the State of Michigan, and the State had the power to reconvey them without inquest of office-found. 1870. *Orans v. Reeder* (21 Mich. 24), IV, 430.

ESTATE.

Lands conveyed to husband and wife. Where lands are conveyed to husband and wife, each takes an entirety, notwithstanding a statute providing that all conveyances of lands to two or more persons shall create estates in common. 1868. *Hemingway v. Scales* (42 Miss. 1), II, 586.

See CONVEYANCE ; REAL ESTATE.

ESTOPPEL.

1. **In pais.** To constitute estoppel *in pais*, it must appear that the declarations or acts relied on influenced the party's conduct. 1873. *Mulloney v. Horan* (49 N. Y. 111), X, 335.

2. **By conduct.** Where the owner of an iron furnace upon a stream claims that the owner of a mill above his works had bound himself, by verbal contract, that he would never stop the usual and constant flow of the water in the channel of the stream, and the owner of the furnace, after the death of the owner of the mill, stood by and saw the mill sold by the administrator of the deceased, to an innocent purchaser, and gave no notice of the verbal agreement between himself and the deceased, he is estopped from setting up the verbal agreement against the purchaser who invested his money without notice of it, and the parties stand upon their respective rights under the general law governing riparian proprietors in the use of the water in the stream. 1870. *Pool v. Lewis* (41 Ga. 162), V, 526.

3. — If a grantor shows the purchaser of premises the wrong lines, and is cognizant of his acting on that information, and is silent while a house is erected and money expended, he will be deemed to have directly led the purchaser into a line of conduct prejudicial to his interest. Such acts would constitute an estoppel *in pais*. 1871. *Rutherford v. Tracy* (48 Mo. 335), VIII, 104

4. — Defendant, having an equitable interest in one-half of a lot of land, was present when the lot was offered for sale at auction, but gave no notice of his claim and entered the list of bidders. *Held*, that he was estopped from afterward asserting his title against the purchaser. 1873. *Rice v. Bunce* (49 Mo. 231), VIII, 129.

5. — Defendant caused plaintiff's goods to be attached, relying on his representations that they were the property of another. *Held*, that plaintiff was estopped to show that his representations were false, though made without notice of the debt due the attaching creditor and without any intention to deceive him. 1871. *Horn v. Cole* (51 N. H. 287), XII, 111.

6. **Promissory note — forged signature — when alleged maker not estopped from denying.** In an action on a promissory note, by an innocent holder for value, it was conceded that the defendant's signature thereto was a forgery, but plaintiff claimed that defendant was estopped by his declarations and conduct from denying the execution of the note. The note was payable one day after date. The acts relied on to create an estoppel were as follows: About a year after date of the note, plaintiff asked defendant if he was aware he held C.'s note with his name on it? to which defendant replied that he was, and that "he thought the best way was not to press C.; that if he was let alone he thought he would come out all right." C. was the forger of the note, and the one from whom plaintiff had received it. He was, at the time of the above conversation, in failing circumstances. *Held*, that defendant was not estopped from denying the execution of the note. 1871. *Hefner v. Vandolah* (57 Ill. 520), XI, 39.

7. **Forged deed — estoppel by delay in attacking.** In an action to recover possession of land held by an innocent purchaser, who claimed title through a forged deed which had been of record five years with knowledge of the plaintiff, the delay of the plaintiff to attack the forged deed is not material if it be not relied upon as extinguishing the plaintiff's title by the operation of the statute of limitations; and such delay does not estop the plaintiff to say that the alleged deed is not his deed. 1871. *Meley v. Collins* (41 Cal. 663), X, 279.

8. **Grantor and grantee.** If one having no title to land conveys the same with warranty to A by a deed duly recorded, and he afterward acquires a title and conveys to B, the purchaser of B is estopped to aver that the grantor was not seized at the time of his conveyance to A, the first grantee. The right of the purchaser of A to insist on the estoppel is not impaired by admitting, in an action for the possession of the land, that A's grantor had no title when he conveyed to him. 1870. *McQuaker v. McEvoy* (9 R. I. 528), XI, 295.

9. — M. made a deed purporting to convey land, to which he had no title, to defendant, with covenants of warranty against all persons claiming under him. Afterward M. acquired title to the land and mortgaged it to H., under whom plaintiff claimed. In ejectment, *held*, that plaintiff was estopped to say that M. was not seized at the time of the first conveyance and could therefore not recover. 1873. *Doe d. Potts v. Dowdall* (3 Houst. Del. 369), XI, 757.

10. **Dower — fraudulent deed.** The judgment in an action, in behalf of the creditors against the debtor and his wife, setting aside as fraudulent a deed

from them to a third person, and a deed of the same premises from such third person to the wife, and directing a sale does not operate as estoppel by record to defeat the wife's claim for dower, where the matter of her inchoate right of dower was not in issue nor litigated in the action. 1872. *Malloney v. Horan* (49 N. Y. 111), X, 335.

11. A bank is estopped by the statement of its cashier, though false in fact, to a surety on a note held by the bank that the note is paid, intending the surety to so believe, and which he does believe, and so changes his position toward his principal as to injure him. 1871. *Cocheco Nat. Bank v. Haskell* (51 N. H. 116), XII, 87.

12. One contracting with an insane person is estopped from alleging the insanity to defeat the contract. 1869. *Allen v. Berryhill* (27 Iowa, 534), I, 309.

13. Of covenant after eviction. In an action by a purchaser of lands after eviction on the covenants in the deed, the covenantor is not estopped to show title in himself unless he had due notice of the ejectment suit. 1869. *Somers v. Schmidt* (24 Wis. 417), I, 191.

14. Promise not to plead statute of limitations. A defendant is not estopped by a parol promise not to plead the statute of limitations, if plaintiff will allow him further time. 1870. *Shapley v. Abbott* (42 N. Y. 448), I, 548.

15. Of infant. Parents executed and delivered a deed of premises to their child of six years. When the child became sixteen, the parents executed a conveyance of the same premises, with other real estate, to S. in trust, upon which he made large advances in money. To this conveyance the name of the mother was signed, by the child, at her request. *Held*, that the child was not thereby estopped from claiming title to the premises under the previous deed, no fraudulent intention being proved. 1871. *Spencer v. Carr* (45 N. Y. 406), VI, 112.

16. Of heir. Acquiescence in the payment of funds by an administrator to certain persons under mistake of the legal rights of such persons does not estop the true heir from asserting her claim to such funds on being apprised of her rights. 1869. *Davis v. Bagley* (40 Ga. 181), II, 570.

See AGENCY; ASSESSMENT; BILLS AND NOTES; MUNICIPAL CORPORATION.

EVICTION.

C. bought certain real estate, upon which there was a mortgage, took a deed containing covenant of warranty and the usual full covenants, and gave his bond for the payment of a portion of the purchase-money. A foreclosure of the original mortgage was permitted by the grantor, and C. bid off the property at the sheriff's sale, but immediately assigned his bid to H., to whom the deed was executed. In an action on the bond, *held*, that there had been an eviction of C., and that he was not liable. 1871. *Cowdry v. Coit* (44 N. Y. 332), IV, 690.

See COVENANTS.

EVIDENCE.

- I. MATTERS JUDICIALLY NOTICED.
- II. ADMISSIONS AND DECLARATIONS.
- III. PRESUMPTIONS AND PRIMA FACIE PROOF.
- IV. BEST AND SECONDARY EVIDENCE.
- V. PAROL EVIDENCE TO AFFECT WRITTEN INSTRUMENTS.
- VI. EVIDENCE APPLICABLE TO PARTICULAR SUBJECTS AND ISSUES.
 1. *Foreign laws.*
 2. *Mental capacity.*
 3. *Handwriting.*
 4. *Of custom.*
 5. *Miscellaneous.*
 6. *Unstamped instruments* — See STAMPS.
 7. *Character* — See CRIMINAL LAW.
- VII. WITNESSES — See WITNESSES.

I. MATTERS JUDICIALLY NOTICED.

1. **The statute of another State** must be introduced in evidence; a court will not take judicial notice of it. 1870. *Hunt v. Johnson* (44 N. Y. 27), IV, 681.

2. **Acts creating municipal corporations** are public acts, of which courts will take notice without proof. 1871. *Prell v. McDonald* (7 Kans. 426), XII, 428.

II. ADMISSIONS AND DECLARATIONS.

3. **Admission.** On the trial of an action for goods sold and delivered, the defendant offered in evidence an execution and return of the sheriff, and a schedule of property attached thereto, verified by the plaintiff, in the case of a third person against the plaintiff, of a date subsequent to said alleged sale to the defendant, this claim not being included in the list. *Held*, that, as an admission of the plaintiff, this was proper evidence. 1870. *Springer v. Drosch* (32 Ind. 486), II, 356.

4. **Declarations.** In all cases, civil or criminal, where evidence of an act done by a party is admissible, his declarations, made at the time, having a tendency to elucidate, explain, or give character to the act, are also admissible. 1871. *Hamilton v. State* (36 Ind. 280), X, 22, and *note*, 28.

5. — In the trial of an indictment for assaulting with intent to rob, a witness for the prosecution testified that at the time of committing the assault the prisoner stated he was having his revenge, etc., for a previous attack by the assaulted party upon him. *Held*, that the declaration was admissible. *Id.*

6. **As to dedication.** Evidence of the declarations of the owner of lands claimed to be dedicated as a highway, explanatory of his intentions both before and after the opening of the way, is admissible. 1869. *Buchanan v. Curtis* (25 Wis. 99), III, 23.

7. **Declarations of testator.** Declarations of a testator, tending to show that his mind and faculties were impaired, and that a will was procured by undue influence, are admissible to impeach the validity of the will. 1869. *Bates v. Bates* (27 Iowa, 110), I, 260.

8. **Dying declarations.** In order to make dying declarations admissible in evidence, it is not necessary that the declarant state every thing constituting the *res gestæ* of the subject of his statement; but only that his statement of any given fact be a full expression of all that he intended to say as conveying his meaning as to such fact. 1878. *State v. Patterson* (45 Vt. 306), XII, 200.

III. PRESUMPTIONS AND PRIMA FACIE PROOF.

9. **Mailing a letter,** addressed to a merchant at his place of business, is *prima facie* evidence that it reached its destination, subject to rebuttal by him. 1870. *Hunley v. Whittier* (105 Mass. 391), VII, 536.

10. — There is no presumption of law that a letter, mailed to one at the place he usually receives his letters, was received by him. Proof that money was inclosed by the postmaster at M., in an envelope directed to the cashier of a bank at B., and then inclosed in a registered envelope directed to the postmaster of B., and deposited in the mail bag for the post-office at B., is not sufficient to justify a jury in finding that the bank received the money. 1871. *First National Bank of Bellefont v. McManigle* (69 Penn. St. 156), VIII, 236.

11. **Presumption as to foreign law.** In the absence of evidence the presumption is that the laws of another State conform in substance to the general principles of the common law. 1869. *Ellis v. Mason* (19 Mich. 186), II, 81.

12. **In action upon contract of infant.** Defendant hired plaintiff, a boy without knowledge or skill in the hat business, to work in his hat factory, stipulating verbally with him at a specified rate for three years' service. The contract being void under the statute of frauds, in an action upon the *quantum meruit*, held, that the contract was not even *prima facie* evidence of the value of plaintiff's services. 1871. *Galvin v. Prentice* (45 N. Y. 162), VI, 58.

13. **Of negligence.** In an action against a railroad company to recover for injuries received by a car getting off the track, held, that the fact that the car left the track was evidence of negligence, and cast the burden of proof on the defendant. 1872. *Feital v. Middlesex R. R. Co.* (109 Mass. 398), XII, 720.

IV. BEST AND SECONDARY EVIDENCE.

14. **Letters.** In an action by the broker against his customer, to recover, in case of loss in purchase of stock, the letters of a correspondent in a neighboring city are incompetent as evidence to prove the purchase and subsequent sale of the stock in obedience to orders from the broker. 1869. *Rosenstock v. Torrey* (32 Md. 169), III, 125.

15. **Letter press copies** of correspondence are mere secondary evidence. *Foot v. Bently* (44 N. Y. 166), IV, 652.

16. **Copies of lost letters.** A sworn copy of a letter-press copy of a lost letter is competent as evidence of the contents of the letter, without producing the letter-press copy. 1869. *Goodrich v. Weston* (102 Mass. 362), III, 469.

17. **Of statements made through interpreter.** A witness, who was a foreigner, testified that he never made a certain statement to any one. To impeach the witness in respect to the statement L. was called, to whom the

witness had conversed only through an interpreter. *Held*, that L. could not testify as to the fact of witness having made the statement, but that the interpreter who had communicated the statement to him must be produced and sworn. 1869. *State v. Noyes* (36 Conn. 80), IV, 37.

18. **Of intention.** Where the intention of a person becomes material, such person, being otherwise competent as a witness, may testify to that intention, unless prevented by some controlling principle of law applicable to the particular case. 1869. *Moore v. Davis* (49 N. H. 45), VI, 460.

19. **Where a certificate of deposit is inadmissible in evidence, for want of a stamp, parol evidence is admissible to prove the facts it recites.** 1870. *Leach v. Hale* (31 Iowa, 69), VII, 112.

20. **As bearing on the probabilities.** Where the evidence was conflicting upon the question, whether a party verbally agreed to deliver possession of certain premises upon a fixed date, in consideration of the plaintiff's purchase of the same at auction, the testimony of the plaintiff's agent that he should not have bid upon the property at all, but for the assurance that possession would be delivered at the time agreed upon, was *held* admissible, as bearing upon the probabilities of the case, to show whether or not the alleged agreement was made. *Moore v. Davis* (49 N. H. 45), VI, 460.

21. **Deed of corporation.** A certified copy from the registry, of a deed purporting to have been executed under the authority of a corporation by its president, is admissible in evidence without proof that the president had authority to execute it. 1869. *Chamberlain v. Bradley* (101 Mass. 188), III, 331.

V. PAROL EVIDENCE TO AFFECT WRITTEN INSTRUMENTS.

22. **Parol evidence is admissible for the purpose of applying the terms of a written contract to the subject-matter, and removing any ambiguity arising from such application.** 1868. *Stoops v. Smith* (100 Mass. 68), I, 85; *Sweat v. Shumway* (102 Mass. 365), III, 471.

23. — In an action on a written contract to pay "fifty dollars for inserting business card in two hundred copies of his advertising chart, to be paid when the chart is published," etc., parol evidence is admissible to show that at the time the contract was made, the plaintiff agreed to make the chart of a certain material, and to publish it in a certain manner. *Stoops v. Smith, supra*.

24. **Parol evidence is admissible to show that a bill of sale of a vessel absolute in form is a mortgage.** 1868. *Clark v. Washington Insurance Co.* (100 Mass. 68), I, 185.

25. — Parol evidence is admissible to show that by the word "barrels," used in a written contract, was intended vessels of a certain kind and capacity, and not a measure of quantity, and that the parties contracting had reference not to a statute barrel, but to certain vessels of uniform size, of different capacity from the statute barrel. *Miller v. Stevens* (100 Mass. 509), I, 139.

26. **Parol evidence of a verbal agreement is competent, although written instruments have been subsequently executed in part performance of such agreement.** 1870. *Barker v. Bradley* (42 N. Y. 316), I, 521.

27. The words of written instruments are to be understood in their plain, ordinary and popular sense, unless they are *apparently* used in some new, technical or peculiar sense. 1870. *Willmoring v. McGaughey* (30 Iowa, 205), VI, 678, and *note*, 678.

28. Of experts as to terms of a contract. In an action upon a written contract for the sale of hogs, to be "delivered at W., Iowa, at H. W.'s option, by giving ten days' notice at any time in June," *held*, that parol evidence was not admissible to show how such contracts were understood by stock dealers, to which class the parties belong. *Id.*

29. To show that contracts were for unlawful purposes. The rule which forbids the introduction of parol evidence to contradict, add to, or vary a written instrument, does not extend to evidence offered to show that a contract was made in furtherance of objects forbidden by statute, by common law, or by the general policy of the law. 1866. *Martin v. Clarke* (8 R. I. 329), V, 586.

30. As to receipts. While parol evidence is admissible for the purpose of explaining a receipt, this exception to the general rule respecting the inadmissibility of such evidence to vary the terms of a written instrument, must be strictly confined to instruments which are purely receipts, and will not be extended to an instrument which embraces or is in its nature a contract. 1871. *Stapleton v. King* (38 Iowa, 28), XI, 109.

31. — Under a contract of sale of three grades of lumber, at a specified price for each grade, the vendor delivered, and the vendee gave his receipt for so many thousand feet of each grade, "prime," "merchantable," and "refuse." In an action by the vendor for the purchase-money, *held*, that evidence offered by the vendee was inadmissible to show that lumber claimed as "prime" and "merchantable," was only "refuse." 1871. *McCormick et al. v. Sarson* (45 N. Y. 265), VI, 80.

32. The contract of indorsement is not within the rule which excludes evidence to alter or vary the terms of an express agreement. *Ross v. Espy* (66 Penn. St. 481), V, 894.

33. — In an action in Connecticut against the indorser of a promissory note, made and indorsed in blank, in New York, where it was made payable, *held*, that evidence of a special parol agreement, that the indorsement was only for collection, was admissible, although, by the law of New York, a parol contract cannot be introduced in evidence to change the legal import of a blank indorsement. 1869. *Downer v. Chesebrough* (36 Conn. 39), IV, 29.

34. — The admissibility of parol evidence in relation to commercial paper discussed. *Chaddock v. Vanness* (35 N. J. 517), X, 256.

35. As to deed. Where a legal boundary between two towns differed from the one popularly recognized, and a deed described the boundary in terms equally applicable to either, *held*, that parol evidence was admissible to explain the ambiguity. 1868. *Putnam v. Bond* (100 Mass. 58), I, 82.

36. — A deed described the land intended to be conveyed as beginning "at a rock on the north side of a road * * * and running from thence, on the north side of said road, thirty-eight degrees, east, twenty-two degrees,

south, sixty-three degrees, east, thirty-five, south, thirty-eight degrees, west, twenty-five and one-half, then by straight line to the beginning." *Held*, in an action of ejectment, that parol evidence to show that perches were intended where degrees were mentioned, at the end of the first line, and that perches should be inserted at the end of the second and third lines, was inadmissible. 1872. *Clarke v. Lancaster* (36 Md. 196), XI, 486, and *note*, 491.

37. *Of quantity of land conveyed.* Parol evidence is not admissible to prove a warranty of the quantity of land conveyed by deed. 1869. *Cabot v. Christie* (42 Vt. 121), I, 818.

38. *Of mistake in will.* By a will, land in "section thirty-two" was devised to E., and land in "section thirty-one" was devised to J. *Held*, that parol evidence was inadmissible to show that the draughtsman of the will made a mistake, or that "section thirty-two" should be section thirty-three, and "section thirty-one" should be section thirty-two. 1870. *Kurts v. Hübner* (50 Ill. 514), VIII, 665 and *note*, 669.

29. *Errors in engrossing statute.* In an action under an act of the legislature, which act had been signed by the governor, certified under the great seal, and published as required by the State constitution, evidence was offered to show that the act had been changed by a mistake of the engrossing clerk. *Held*, inadmissible. 1870. *The Mayor of Annapolis v. Harwood* (32 Md. 471), III, 161.

40. *Irregularities in passing statute.* Parol evidence is inadmissible to show that the legislature has not complied with the requirements of the constitution in passing a law which has been promulgated in due form. 1871. *Louisiana State Lottery v. Richoux* (23 La. Ann. 743), VIII, 602.

41. *Parol contemporaneous agreement.* In an action for goods sold and delivered, the plaintiff gave in evidence a written order for the goods, signed by the defendant, and proved that they were delivered according to the terms of such order. The defendant thereupon offered to prove that at the time said order was made, as an inducement thereto, plaintiff verbally agreed with defendant that the latter might revoke the order during the summer and not take the goods, and that during the summer and before the delivery of the goods he did revoke said order. *Held*, that such offer was properly rejected. 1870. *Wemple v. Knopf* (15 Minn. 440), II, 147.

42. *Bond or note of married woman.* Parol evidence is not admissible to prove that the bond or note of a married woman was intended to be a charge upon her separate estate. 1870. *Kimm v. Weippert* (46 Mo. 532), II, 541.

43. *That promissory note was conditional.* In an action by the payee against the maker of a promissory note, parol evidence is inadmissible to show that it was conditional. *Walker v. Crawford* (56 Ill. 444), VIII, 701.

44. *As to payment of promissory note.* In an action on a promissory note, *held* that parol evidence was admissible to show that the real undertaking was that the note should be paid in Confederate money, though not so expressed in the instrument. 1869. *Donley v. Tindall* (82 Tex. 48), V, 234.

45. Consideration for mortgage. Parol evidence is admissible to show that a mortgage for a specified sum was given to indemnify the mortgagee for becoming surety for the mortgagor on a note. 1870. *Kimball v. Myers* (21 Mich. 276), IV, 487.

46. As to whether parties signed a note as agent or principal. Where the officers of a corporation executed a promissory note, each adding after his name his official title, *held*, that parol evidence was admissible to show that they signed it as agents of the company, and that it was accepted as the note of the company. *Hails v. Peiros* (32 Md. 327), III, 139. See BILLS AND NOTES.

47. — When parol evidence is admissible to explain phrases and terms used in contracts. See note to *Willmering v. McGaughey* (30 Iowa, 205) VI, 678.

VI. EVIDENCE APPLICABLE TO PARTICULAR SUBJECTS AND ISSUES.

1. *Foreign laws.*

48. In proof of the laws of a foreign country, the testimony of any person, whether a professed lawyer or not, who appears to the court to be well informed on this point, is competent. 1868. *Hall v. Costello* (48 N. H. 176), II, 207, and see note, 306.

49. — A person offered as a witness and expert in foreign law may state the written law without producing it, and he may produce a copy of the statutes or code of the foreign country, and refer to the same, for the purpose of refreshing his recollection as to the law. 1870. *Barrows v. Downs* (9 R. I. 446), XI, 288.

50. — A Spanish lawyer, who had practiced law in Cuba, was allowed to testify from a printed copy of the Spanish code of commerce, as to the laws regulating special partnerships in Cuba. *Ib.*

2. *Mental capacity.*

51. Witnesses who are not experts cannot give their opinions on the question of sanity. DOE, J., dissenting. 1870. *State v. Pike* (49 N. H. 399), VI, 538.

52. After a non-professional witness has stated the facts upon which his opinion is founded, he may be permitted to state his opinion as to the sanity or insanity of a testator. 1871. *Pidcock v. Potter* (68 Penn. St. 342), VIII, 181, and note, 184.

53. In an action to avoid a deed on the ground of the grantor's mental incapacity at the time of its execution, evidence of the grantor's state of mind a year after the execution may be rejected by the trial judge, in his discretion, as too remote. 1871. *White v. Graves* (107 Mass. 325), IX, 33.

3. *Handwriting.*

54. For the purpose of proving the genuineness of a signature against a party sought to be charged thereby, it is not competent to prove that the signature is not in a simulated handwriting. 1873. *Cowing v. Manley* (49 N. Y. 192), X, 346.

4. *Of custom.*

55. Plaintiff contracted in writing to do the plastering work of defendant's house, in Buffalo, at a certain price per square yard. He included in the bill and charged for the full surface of the walls, without deductions for doors, windows, etc. In an action to recover the amount, evidence was introduced to prove that it was the custom of plasterers in Buffalo so to measure and charge. *Held*, that the evidence was proper, and the custom not unreasonable; *held*, also, that it was error to reject defendant's evidence that he had no knowledge of the custom. 1872. *Walls v. Bailey* (49 N. Y. 464), X, 407.

56. To vary a rule of law. Evidence that stock certificates, issued in the name of one as trustee, and by him transferred in blank, are constantly bought and sold in the market without inquiry, is inadmissible, as varying an established rule of law. 1868. *Shaw v. Spencer* (100 Mass. 382), I, 115.

5. *Miscellaneous.*

57. In an action against the owner of a dog to recover for injuries done to sheep by the dog, *held*, that evidence tending to prove that the dog had killed or worried sheep before was admissible. 1868. *East Kingston v. Towle* (48 N. H. 57), II, 174.

58. Of diversion of bill. Evidence to show that a bill was fraudulently diverted from its original purpose is inadmissible, in an action by a *bona fide* holder for value. 1871. *First National Bank v. Hall* (44 N. Y. 395), IV, 698.

59. Action on insurance policy. In an action by the assignor of a policy of insurance, for the use of the assignee, evidence that the plaintiff set the building on fire is admissible. 1870. *Illinois Mutual Fire Ins. Co. v. Fox* (53 Ill. 151), V, 38.

60. In an action against express company. In an action against an express company for failure to deliver a package, evidence as to whether the consignee was well known is admissible, on the question of due diligence. 1871. *Whitbeck v. Holland* (45 N. Y. 18), VI, 23.

61. An escape of a prisoner during the trial is evidence of guilt, though not conclusive. 1871. *Murrell v. State* (46 Ala. 89), VII, 592.

62. As to contract. Where the mutual understanding of the parties is to determine the existence of a contract, evidence of their individual understandings is admissible. 1871. *Prescott v. Locke* (51 N. H. 94), XII, 55.

63. Of contemporaneous frauds. Evidence of contemporaneous fraud is admissible to prove fraud charged only when there is evidence that the two were parts of one scheme to defraud. 1872. *Jordan v. Osgood* (109 Mass. 457), XII, 731.

See BANK AND BANKING; CARRIERS; MARRIAGE; MASTER AND SERVANT;
PARTNERSHIP; SALE; TRUSTS; WILL.

EXECUTION.

1. **Destruction of property by fire after levy—insurance.** An execution creditor, who has caused an execution to be levied upon premises which are afterward destroyed by fire, is not entitled to the proceeds of an insurance policy. 1871. *Plimpton v. Farmers' Mut. Ins. Co.* (43 Vt. 497), V, 297.

2. **An officer will not be protected by an execution valid on its face, if he have notice *aliunde* of some jurisdictional defect which renders the judgment void; but he may, in such case, demand indemnity from the execution creditor.** 1872. *Grace v. Mitchell* (31 Wis. 538), XI, 618.

See REPLEVIN.

EXECUTORS AND ADMINISTRATORS.

1. **Protected for acts in good faith.** An administrator, who in good faith makes investments of funds in his possession, which, on account of subsequent events beyond his control, become worthless, is relieved from responsibility under the constitution and laws of Georgia; and an administrator, who pays funds to persons at the time apparently entitled to such payment, but afterward found to be not entitled, is protected under the said relief provisions. 1869. *Davis v. Bagley* (40 Ga. 181). II, 570. See TRUST.

2. **Interest on funds of estate.** Where there is unnecessary delay in making a final settlement of the funds in the hands of administrators, interest will be required of them; and where they use the funds so retained in private speculation, they will be liable for compound interest. 1870. *Johnson's Administrators v. Hedrick* (33 Ind. 129), V, 191.

3. **Debt due from executor to testator.** In this country the liability of an executor for a debt due his testator is not discharged, but the debt is, in his hands, general assets of the estate for the benefit of creditors, legatees and other parties interested. 1869. *Kaster v. Pierson* (27 Iowa, 90), I, 254.

4. **Actions against.** A guardian appointed in one State cannot maintain, as such, a suit against an executor or administrator appointed in another State. 1871. *Leonard v. Putnam* (51 N. H. 247), XII, 106.

5. **Action on covenant against incumbrance.** The administrator and not the heir is the proper party to bring action upon a covenant, against incumbrance broken during the life of the ancestor. 1870. *Prink v. Bellis* (33 Ind. 135), V, 193.

6. **Attorney's fees.** Administrators are jointly and personally liable for the fees of an attorney employed by them in proceedings on their final accounting. 1871. *Mygatt v. Wilcox* (45 N. Y. 306), VI, 90.

See JUDGMENT; LIMITATION OF ACTION.

EXEMPTIONS.

1. **Laws exempting homesteads from execution for debts "heretofore contracted," are unconstitutional.** 1872. *Homestead Cases* (23 Gratt. Va. 266), XII, 507.

2. The homestead laws of North Carolina held constitutional as to prior debts, as being restrictions on former exemptions. 1878. *Garrett v. Chesire* (69 N. C. 896), XII, 647.

3. Do not apply to State. Exemption laws do not apply to the State unless by express words in the enactment. 1871. *Commonwealth v. Cook* (8 Bush. Ky. 220), VIII, 456.

4. — An execution was issued on a judgment in favor of the State in an action on a sheriff's bond. *Held*, that the judgment debtors' homesteads were not exempt under the homestead law. *Id.*

See BANKRUPTCY.

EXPRESS COMPANY—See AGENCY; CARRIERS.

EXTRADITION.

By the constitution of the United States, the Federal government has the exclusive power to regulate, provide for and control the surrender of fugitives from justice from foreign countries. Hence the provisions of the Revised Statutes (1 R. S. 164, §§ 8-11) for such surrender are unconstitutional; and a warrant issued by the governor in pursuance thereof is void. 1872. *People v. Curtis* (60 N. Y. 321), X, 488.

FACTOR—See AGENCY; BANKRUPTCY.

FALSE IMPRISONMENT.

In an action for false imprisonment, it is not necessary to allege in the complaint that the imprisonment was malicious and without probable cause. 1871. *Collier v. Lower* (35 Ind. 285), IX, 735.

FALSE PRETENSES—See FRAUD.

X FAMILY PHYSICIAN—See INSURANCE.

FENCE—See RAILROADS.

FERRY.

1. Franchise not terminated by death of grantee. A ferry license, when granted, becomes the property of the grantee, and is a private right, subject only to the governmental control growing out of its other nature of *publici juris*. When granted in an estate for years, the death of the grantee can no more terminate it than the death of a tenant can terminate a like estate in lands. 1869. *Lippencott v. Allander* (27 Iowa, 460), I, 299.

2. A ferryman is responsible as insurer of all property committed to his care; but where the owner retains control of the property, the ferryman is only responsible for due diligence. 1870. *Harvey v. Rose* (26 Ark. 8), VII, 595.

3. — Plaintiff applied to cross a river with his wagon and a team of six mules, at defendant's ferry. Defendant directed the front span of mules to be detached from the wagon and left upon the bank until the next trip. As the

boat was about leaving the bank with the wagon and four mules, a servant of a person crossing at the time, at plaintiff's request, brought the two mules which had been detached and hitched to a stake on the bank, into the after part of the boat, behind the wagon, and held them. One of the detached mules fell overboard on the passage and was drowned. *Held*, that plaintiff was not entitled to recover unless the cause of the loss was the omission of defendant, after becoming aware of what plaintiff had done, to use a proper degree of care to avoid the consequences. *Ib.*

4. — Ferryman do not assume all the responsibility of common carriers. Property carried upon a ferryboat, in the custody and control of the owner, a passenger, is not at the sole risk either of the ferryman or of the owner. If lost or damaged by the neglect of the ferryman, he must respond to the owner. But the latter cannot recover if he is guilty of negligence on his part, contributing to the loss. 1873. *Wyckoff v. The Queens County Ferry Co.* (52 N. Y. 32), XI, 650, and *note*, 656.

5. — When the only possession and custody by a ferryman, of a horse and carriage, is that which necessarily results from the owner's driving the same on board the boat and paying the ferriage, the ferryman is not chargeable with the full liabilities of a common carrier. *Ib.*

6. — In an action against a ferry company to recover the value of a horse and carriage, alleged to have been lost through its negligence, the evidence tended to show that the chain which was provided to be put up as a guard or barrier at the end of the boat, to prevent casualties to horses, etc., was either not up or was entirely insufficient for the purpose. *Held*, that if either fact was established, and the loss resulted from that cause, the defendant was liable. *Ib.*

7. *Private ferry.* One who keeps a ferry for his own use and for the accommodation of customers at his mill, but who charges no ferriage, is not a common carrier. 1871. *Self v. Dunn* (42 Ga. 528), V, 544.

FIDUCIARY CHARACTER—*See* BANKRUPTCY.

FIRE.

1. *Action against one on whose premises fire begins.* The statute 6 Anne, chap. 3, § 6, providing that "no action shall be maintained against any person in whose house or chamber any fire shall accidentally begin," is part of the common law of this country; otherwise of the statute 14 Geo. III, chap 78, § 86, which exempts from liability persons "in whose house, chamber, stable, barn or other building, or on whose estate any fire shall accidentally begin." 1873. *Spanliding v. Chicago and Northwestern Railway Company* (80 Wis. 110), XI, 550.

2. *Severing fire hose.* The servants of a railroad company ran over and severed a hose laid across the railroad track to supply water to extinguish a fire in plaintiff's house. As a probable result of such act plaintiff's house was destroyed. *Held*, that the company was liable. 1872. *Metallic Compression Co. v. Fitchburg R. R. Co.* (109 Mass. 277), XII, 639.

See NEGLIGENCE.

FIRE COMMUNICATED BY NEGLIGENCE — *See NEGLIGENCE.*FIREMEN — *See MUNICIPAL CORPORATION.*

FISHWAY

1. Every legislative grant of a right to maintain a dam across a stream where fish are accustomed to pass is subject to the condition that a sufficient way shall be allowed for the fish, unless, by express provision or obvious implication in the grant, the maintenance of a fishway is dispensed with. 1870. *Commissioners v. Holyoke Water Power Company* (104 Mass. 446), VI, 247.

2. The maintenance of dams without fishways in an unnavigable river, which is the outlet to a large inland lake, thereby obstructing the passage of migratory fish from the sea to the lake, constitutes an indictable offense at common law. 1870. *State v. Franklin Falls Company et al.* (49 N. H. 240), VI, 518.

3. No right will be acquired as against the State by the obstruction of a public fishery, though continued for more than twenty years under a claim of right, if such obstruction in fact originated without right. *Ib.*

See CONSTITUTIONAL LAW.

FIXTURES.

1. How determined. The question of fixture does not depend upon whether or not the foundation is let into the soil, but in the nature and character of the act by which the structure is put in place, the policy of the law connected with its purpose, and the intentions of those concerned in the act. 1869. *Moise's Appeal* (63 Penn. St. 28), I, 372.

2. Buildings erected by the government for war purposes. The United States erected in the borough of York, upon ground dedicated as a public common, buildings for use during the war. *Held*, that the circumstances showed that these buildings were intended for temporary use and not as permanent structures, and that the borough, by lying by and suffering them to be erected upon a public common, where, as permanent structures, they would be nuisances, is estopped from declaring that the United States intended to annex their chattels to the freehold. *Ib.*

3. Machinery in machine shop. The owner of a machine shop gave a chattel mortgage on the machinery therein, before it was set up, but in contemplation that it should be set up and attached to the building. He afterward, and after it was set up, gave a mortgage on the land and building. *Held*, that the second mortgagee could hold the machinery against the first mortgagee. 1871. *Pierce v. George* (108 Mass. 78), XI, 310, and *note*, 314.

4. — A mortgage of a machine shop covers machines, pulleys and shafting, bolted or screwed to the building, or to blocks bolted to the building; also essential parts of the machinery, although they can be detached therefrom without injury. But it does not cover machines which are not fastened to the floor, but are supported by their own weight; nor machines which are fastened

to benches, although run from the shafting; nor vises screwed to benches although the benches are nailed to the building. *Id.*

5. **Portable hot-air furnaces** used for warming a dwelling-house, set in pits prepared for them in the cellar, and kept in place by their own weight, are part of the realty; as also are the pipes leading from the furnaces to the chimney. 1872. *Stockwell v. Campbell* (89 Conn. 362), XII, 398.

6. **Railroad bridges.** Where a railroad company entered upon lands, having acquired the right of way, and built thereon stone piers and abutments for a bridge, and subsequently abandoned that portion of its road, *held*, that the piers and abutments were not fixtures, and did not pass to the land owner. 1872. *Wagner v. Cleveland, etc., R. R. Co.* (22 Ohio St. 568), X, 770.

7. **The rolling stock** of a railroad company is personal property. 1878. *Randall v. Ellwell* (52 N. Y. 521), XI, 747, *contra, note*, 751.

8. **Cotton gin-stand.** As between the vendor and vendee of lands used in growing cotton, a cotton gin-stand, put up after the usual manner for use on the place, is a fixture, and passes with the land. 1868. *Richardson v. Borden* (42 Miss. 71), II, 595.

9. **A tenant at will** removed a substantially constructed house from another place, on to the land of which he was a tenant, put it upon a stone foundation, with a cellar under it, without the land owner's consent, or any contract that the tenant should hold it as personal property. *Held*, that it became a part of the realty, and could not afterward become personal property by the mere assent of the land owner without an actual severance of it from the land. 1871. *Madigan v. McCarthy* (108 Mass. 376), XI, 371.

FOREIGN JUDGMENT — *See* JUDGMENTS.

FOREIGN LAW — *See* EVIDENCE.

FORFEITURE.

A forfeiture without notice to the owner of the property, and without an opportunity of being heard on the question of the owner's culpability, is contrary to the provision in the bill of rights, that no one shall be deprived of his property unless by the judgment of his peers, or the laws of the land. 1870 *Craig v. Kline* (65 Penn. St. 399), III, 636.

FORGERY.

I. WHAT IS — RATIFICATION.

II. RECOVERY OF MONEY PAID ON — *See* BANKS AND BANKING.

III. DEFENSE OF — *See* BILLS AND NOTES.

I. WHAT IS — RATIFICATION.

1. **Detachment of condition from note.** The fraudulent detachment of a condition, made at the same time and on the same paper, from a promissory note, is forgery. 1869. *State v. Stratton* (27 Iowa, 420), I, 283.

2. **Forged check — ratification.** In this case, the evidence shows that plaintiff kept a bank account with defendant; that the book-keeper of plaintiff kept the cash account, made the deposits, etc., and that his relations toward the plaintiff were well understood in the bank; that the book-keeper of plaintiff drew a check on the bank for \$2,500, to which he forged plaintiff's signature, which was an amount above the account to the credit of plaintiff in the bank; that notice was given by the bank that plaintiff had overdrawn his account, who, on being shown the check for \$2,500, said he had not signed it, but did not say that it was a forgery. On seeing his book-keeper, he reported back to the bank that it was all right. Subsequently the book-keeper drew another check on the bank for \$1,700, and again forged the signature of the plaintiff thereto, which the bank paid on presentation. On discovering the second forgery by the book-keeper, six months after the first, plaintiff denounced the act. *Held*, that the act of the plaintiff, in ratifying the first act of forgery made by his book-keeper, exonerated the bank from all liability for having paid it; that his afterward keeping the book-keeper in his confidential employ misled the bank and threw it off its guard; that, having approved and ratified the first forgery, the bank was excused for paying subsequent checks similarly drawn; that the plaintiff had by his own acts caused the injury, and he must therefore bear the loss. 1871. *De Periet v. Bank of America* (28 La. An. 810), VIII, 597.

3. One whose name has been forged to a bond cannot ratify the act so as to bind himself, without a new consideration. *McHugh v. County of Schuylkill* (67 Penn. St. 891), V, 445, and *note*, 447.

FORGED DEED — *See* ESTOPPEL.

FORMER ACQUITTAL — *See* CRIMINAL LAW.

FRAUD.

1. **False representations** as to matters material to a contract, and upon which the party to whom they are made relies to his damage, constitute a defense to an action upon the contract, although their falsity was unknown to the party making them. 1871. *Frensel v. Miller* (87 Ind. 1), X, 62.

2. — To sustain a defense of fraudulent representation it is insufficient to show that the representations made were simply false. Fraudulent intent in the party making them must be shown. 1871. *Griswold v. Sabin* (51 N. H. 167), XII, 76.

3. **Misrepresentation by vendor as to quantity of land.** A vendor of land, to induce the sale, stated the quantity *as of his own knowledge*, and the vendee relying on such statement, purchased. The statement was untrue, though believed by the vendor to be true. *Held*, that the vendor, in representing as a fact that as to which he only had a belief, was guilty of fraud, and liable to the vendee for the damage sustained. 1869. *Cabot v. Christie* (42 Vt. 121), I, 318.

4. — as to price paid. Fraudulent misrepresentations of a vendor of real estate as to the price which he paid therefor are not actionable. 1872. *Holbrook v. Connor* (60 Me. 578), XI, 212, and *note*, 218.

5. **Fraudulent conveyance.** Plaintiff and defendant entered into an arrangement whereby plaintiff, for the purpose of defrauding his creditors, was to convey to defendant, without consideration, a certain tract of land, defendant agreeing to reconvey the same on request. By the fraud of defendant and without the knowledge of plaintiff, the deed was made to include certain other land of plaintiff. In a suit to cancel the deed for fraud and mistake, *held*, that the deed should be set aside as to the land included through defendant's fraud. 1871. *Clemens v. Clemens* (28 Wis. 637), IX, 520.

6. A fraudulent grantee of land conveyed it to a *bona fide* purchaser for value, without notice of the fraud, after a creditor of the fraudulent grantor had obtained a judgment against him, but before the land was sold under an execution issued on such judgment and tested of the term where it was obtained. *Held*, that the title of the *bona fide* purchaser from the fraudulent grantee was to be preferred to that of the purchaser under the execution of the creditor of the fraudulent grantor. 1872. *Young v. Lathrop* (67 N. C. 63), XII, 603.

7. **As to creditors.** The sale upon credit, at a fair price, to a responsible vendee, of the entire effects of an insolvent copartnership, is not *per se* fraudulent as to creditors, although the vendee has knowledge of the insolvency. There is a distinction in this respect between a sale and an assignment. In the case of a sale there is a consideration passing to the vendor from the vendee, who becomes the owner of the property in his own right; and the vendor, while parting with the property, obtains the purchase-money, which, whether paid in cash or in notes, is liable to the claims of creditors, and can be reached by an appropriate action. And, although such a sale may be made on the part of the vendor with the intent to "hinder, delay or defraud his creditors," the title of the vendee is not affected thereby, unless he had previous notice or knowledge of the fraudulent intention of the vendor. 1871. *Ruhl v. Phillips* (48 N. Y. 125), VIII, 522.

8. **In procuring execution of bond.** An illiterate man signed a paper, which was falsely represented to be a petition, but which was really a bond. *Held*, that he was not liable thereon, the plea of *non est factum* being good, although the obligee was not aware of the fraud, before accepting the bond. 1871. *Schuylkill County v. Copley* (67 Penn. St. 386), V, 441. *See* **BILLS AND NOTES.**

9. **The director of a company** is not liable for representations, false in fact but not known by him to be so, made in published circulars of the company on which his name appears only as one of the list of directors. 1872. *Wakeman v. Dalley* (51 N. Y. 27), X, 551.

10. **Evidence of contemporaneous frauds.** In replevin of goods alleged to have been procured by the defendant of the plaintiff, on credit, by means of false and fraudulent representations as to his pecuniary condition, and also with intent not to pay for them. *Held*, that evidence of another act of fraud committed, about the same time, by the defendant, was not admissible to prove the fraud charged, unless there was evidence that the two were parts of one

scheme of fraud committed in pursuance of a common purpose. 1872. *Jordan v. Osgood* (109 Mass. 457), XII, 731.

11. — *Held*, also, that the books of the bank, where the defendant kept his deposit, supported by the oath of the book-keeper, were admissible to show what money he had in the bank at the time. *Id.*

12. **Pleading.** Where the complaint in an action is for fraud, the plaintiff cannot recover for a breach of contract. 1872. *Ross v. Mather* (51 N. Y. 108), X, 562.

See CONVEYANCE; JURISDICTION; RECOURFMENT.

FRAUD (STATUTE OF)—*See* STATUTE OF FRAUDS.

FRAUDULENT REPRESENTATIONS—*See* PAYMENT.

FRUIT—*See* REAL ESTATE.

GAMING—*See* BETTING AND GAMING.

GENERAL AVERAGE—*See* SHIPS AND SHIPPING.

GIFT.

1. **Causa mortis.** The requisites of a gift *causa mortis* are: 1. It must be made with a view to donor's death from present illness or from external and apprehended peril; 2. The donor must die of that ailment or peril; 3. There must be a delivery. 1872. *Grymes v. Hone* (49 N. Y. 17), X, 313.

2. — The defendant's testator, being about eighty years of age and in failing health, made an absolute assignment of twenty shares of bank stock to his grand-daughter, and handed the assignment to his wife, with instructions to give it to his grand-daughter in case of his death. Five months after he died. *Held*, (1) that it was a valid gift *causa mortis*; and (2) that the court could enforce it, notwithstanding the fact that the stock had not been transferred upon the books of the bank. *Id.*

3. — A gift "*causa mortis*" cannot be sustained when there has been no delivery of the subject of the gift so claimed, although at the time it was sought to be made, it was out of the reach of the would-be donor, so that the delivery was impossible. 1868. *Case v. Dennison* (9 R. I. 86), XI, 222.

4. — Plaintiff's intestate entered the military service during the late war, and just before starting for the army, said to defendant, to whom he had loaned a gun, "If I never return, you may keep the gun as a present from me." He never returned, but died in the service. In an action, by his administrator, to recover the gun, *held*, that the facts did not constitute a gift, either *inter vivos* or *causa mortis*. 1872. *Smith v. Dorsey* (38 Ind. 451), X, 118.

5. **Of savings bank-book.** N. gave his savings bank-book to C., with an intention to give him the deposits represented by the book. *Held*, that this was a valid gift to C. of the deposits. 1869. *Camp's Appeal* (36 Conn. 86), IV, 89.

6. — The delivery of a savings bank pass-book containing the entries by the officers of the bank of the moneys deposited by a deceased wife, with a parol gift of the same by surviving husband when in *extremis*, is a valid *donatio causa mortis* of the money deposited in the bank. 1867. *Tillinghast v. Wheaton* (8 R. I. 586), V, 621.

7. The declaration of an intention to give, followed by delivery of the subject-matter of the intended gift to a bailee, for the benefit of the donee, constitutes a perfected gift. 1869. *Gardner v. Merritt* (83 Md. 78), III, 115.

8. — A grand-mother of several grand-children having stated that "she was going to put money in the bank for her grand-children," deposited various sums of money in the savings bank to the credit of the grand-children, and, in accordance with the by-laws of the bank relative to deposits by parents and guardians, caused them to be made subject to her own order, or that of her daughter. On the death of the grand-mother, her own daughter became executrix of the estate, and withdrew said sums of money from the savings bank and administered them as part of the estate. In a suit to obtain an accounting, of the moneys so withdrawn and administered, *held*, that the deposits were perfected gifts, only liable to be withdrawn for the exclusive benefit of the donees, the grand-children. *Id.*

See VOLUNTARY AGREEMENT.

GOLD CONTRACTS.

1. **Accepting payment under protest.** The holders of certain gold warrants accepted payment thereof in treasury notes under protest, and surrendered the warrants. *Held*, that the payees could not afterward recover the difference between the value of the notes and gold coin. 1870. *Gilman v. County of Douglas* (6 Nev. 27), III, 237.

2. **A promissory note executed subsequent to the passage of the legal tender act of congress of 1862, payable, in terms, in American gold, is not discharged by a tender of United States treasury notes.** 1870. *McGoan v. Shirk* (54 Ill. 406), V, 122.

3. **Payment of in legal tender notes.** A promissory note payable in "gold coin or the equivalent thereof, in United States legal tender notes," is completely discharged by a payment in legal tender notes, dollar for dollar. 1870. *Killough v. Alford* (32 Tex. 457), V, 249.

4. **Judgment on gold contract.** In an action on a promissory note, payable in gold or silver, the judgment, in case of recovery, must be for coin to the amount found due on the note and interest. The judgment for costs must be general, so that it may be satisfied by payments of either kind of lawful money. 1871. *Phillips v. Dugan* (21 Ohio St. 486) VIII, 66.

See LEGAL TENDER ACT; STATE BONDS.

GOODS — See SALE.

GOODWILL — See PARTNERSHIP.

GOVERNOR.

1. **Mandamus against.** Courts have no jurisdiction to issue a mandamus to compel a governor to perform an act required of him by law. 1870. *State v. Warmoth* (23 La. An. 1), II, 712; *Mauran v. Smith* (8 R. L. 192), V, 564, and note, 572.

2. — Where a bill has become a law by reason of the failure of the governor to return it with his objections to the legislature within the prescribed time, the court has jurisdiction to compel the governor to cause the bill to be authenticated as a statute. 1870. *Harpending v. Haight* (39 Cal. 189), II, 432.

GRACE — See BANK AND BANKING.

GRAND JURY.

A judge of the superior court has no right to require a grand jury to have the witnesses on the part of the State examined publicly. 1873. *State v. Branch* (68 N. C. 186), XII, 633.

GRANT — See COVENANT; EASEMENTS.

GUARANTY.

1. **Continuing guaranty.** Defendant gave a letter of credit, asking plaintiff to let T. have "the paints, oils and varnishes, glass, etc., he wants. I will be security for the amount for what he will owe you." *Held*, to be a continuing guaranty. 1870. *Boehne v. Murphy* (46 Mo. 57), II, 485.

2. **Notice to guarantor.** A signed the following letter of credit to B: "Mr. C proposes to purchase some supplies of you * * *. In case you should let him have them, I will see the amount of his account with you paid * * * to the amount of \$400 * * *." *Held*, that the character of this letter of credit or guaranty entitled A to notice that it was accepted and acted upon by B; also to notice, within a reasonable time after the account was closed and the debt became due from C, that he had failed to make payment. 1870. *Montgomery v. Kellogg* (43 Miss. 486), V, 508.

2. — Defendant wrote to the president of plaintiff bank, "I will thank you to submit to your board that if they will lend O'Neil & Co. \$15,000, I shall hold myself responsible for that amount, and will leave with you, as collateral security, the note and mortgage of Isaac Walker, which is at present in your vault for a like sum." *Held*, a guaranty, and that defendant was entitled to notice of acceptance thereof; but if, after the loan was made, defendant had information thereof, and with full knowledge approved of what plaintiff had done in the premises, and assented thereto, this would amount to a ratification, and he would be bound thereby. 1871. *Central Savings Bank v. Shine* (48 Mo. 456), VIII, 112.

See BILLS AND NOTES; SURETY.

GUARDIAN AND WARD.

1. **Rights and powers limited to State.** Where plaintiff, an infant, brought suit by his guardian appointed in another State against the administrator of

his father, *held*, (1) that the rights and powers of guardians do not extend over the persons and property of their wards in other States; (2) that the domicile of the deceased is the place of primary and exclusive probate jurisdiction in the settlement of his estate. 1871. *Leonard v. Putnam* (51 N. H. 247), XII, 106.

2. Guardian's bond — action on, where brought. An action cannot be maintained in the courts of Vermont, on a bond executed to a judge of probate in New Hampshire, to secure the proper discharge of the duties of a guardian, the duties imposed by the guardian's appointment, the obligation created by the bond, and the rights and remedies under it, being all prescribed by the statute of New Hampshire. 1873. *Judge of Probate, etc., v. Hibbard* (44 Vt. 597), VIII, 396.

See TRUST.

HABEAS CORPUS.

A committal for contempt of court will not be reviewed on *habeas corpus*. 1870. *Robb v. McDonald* (29 Iowa, 380), IV, 211.

HANDWRITING — *See EVIDENCE.*

HEIR — *See TRUST; WILL.*

HIGHWAYS.

I. GENERALLY.

II. ACTIONS FOR INJURIES FROM DEFECTS IN.

III. OBSTRUCTIONS AND NUISANCES.

IV. STREETS — *See MUNICIPAL CORPORATION.*

I. GENERALLY.

1. Dedication — evidence of. The plaintiff constructed a road through his own land, which he permitted the public to use freely for two or three years, and subsequently closed it by fences. In an action against the pathmaster for removing the fences, it was *held*, that, where the intention of the owner to dedicate the road to the public is evident, no formal or official acceptance is requisite to constitute a highway by dedication. Evidence of the declarations of the owner explanatory of his intentions, both before and after the opening of the way, is admissible. 1869. *Buchanan v. Curtis* (25 Wis. 99), III, 28.

2. Formal acceptance. Where the charter of a city provides that "when-ever any street, alley or lane shall be opened to or used as such by the public for the period of five years, the same shall thereby become a street, alley or lane for all purposes," no formal act of acceptance is necessary of a street or alley, which has been open to the public use for over twenty years, having been surrendered by the owners of the fee. 1871. *Regus v. The City of Rochester* (45 N. Y. 129), VI, 52.

3. Laying out through cemetery. A court of chancery has jurisdiction to grant an injunction to restrain town officers from wrongfully laying out a highway through a cemetery. 1870. *Trustees of First Evangelical Church v. Walsh* (57 Ill. 363), XI, 21.

4. The owner of the soil over which a highway is located is entitled to emblements growing thereon, and to the entire use of the land, except the right which the public have to use the land and the materials thereon for the purpose of building and maintaining a highway suitable for the safe passage of travelers. 1871. *Cole v. Drew* (44 Vt. 49), VIII, 868.

5. — Defendant's wife, under the direction of the highway surveyor, cut the grass growing in the highway over the land of plaintiff, that her children might go and come from school without getting their clothes wet. She carried the grass away, when cut, and fed it to her husband's horse. *Held*, that although she had a right to cut the grass, yet, by carrying it away, she became a trespasser *ab initio*. *Id.*

6. — The owner of land appropriated to a highway retains his exclusive right in trees and shrubs growing on the land so appropriated, for every purpose not incompatible with the public right of way, and he may maintain an action against an individual who, not acting under statutory or official authority, destroys or removes the trees and shrubs standing or growing in the highway, unless they constitute an obstruction, hindrance or annoyance to travelers. 1871. *Phifer v. Cox* (21 Ohio St. 248), VIII, 58, and *note*, 62.

7. — A municipal corporation laid out a public street over defendant's lands and appraised his damages. *Held*, that in reducing such street to the proper grade, said corporation had an exclusive right, as against the defendant, to carry the soil therefrom and deposit it on a street in another part of the city for a necessary purpose. 1871. *City of New Haven v. Sargent* (88 Conn. 50), IX, 860.

8. — But a city has no right to remove earth from one street to improve another. 1871. *City of Delphi v. Evans* (36 Ind. 90), X, 12, and *note*, 19.

9. A bridge erected by a volunteer in a highway, where it was needed, becomes the property of the municipality, where it is allowed to remain for years and should be kept in repair by such municipality. 1871. *Requa v. City of Rochester* (45 N. Y. 129), VI, 52.

10. A public bridge was carried away by an extraordinary freshet, and lodged in the stream in the land of L., where it was allowed to remain for some time, obstructing the flow of water and greatly damaging L.'s adjacent land and trees. *Held*, that, in the absence of evidence of any insufficiency in the construction or fastenings of the bridge, L. could not recover of the town. 1870. *Livsey v. Philadelphia* (64 Penn. St. 106), III, 578.

11. Trespass against town surveyor. An adjoining proprietor cannot maintain an action of trespass against a town surveyor, or a person acting under his authority, for changing the traveled track in a highway nearer his land, where the act complained of was done in a lawful and reasonable manner. 1869. *Munson v. Mallory* (86 Conn. 165), IV, 52.

12. Footmen have no superiority of right at street crossings over teams; they have the right in common, each equally with the other, and in its exercise are bound to use reasonable care for their own safety and to avoid doing injury to any others who may be in the exercise of the equal right of way with them. 1871. *Barker v. Savage* (45 N. Y. 191), VI, 66.

13. — It is the duty of a footman, in attempting to cross a street where the moving vehicles are numerous, to look along the street in the vicinity of the crossing, in both directions, for a reasonable distance; a failure to do this will be held to be contributory negligence, and will prevent recovery in case of injury. *Ib.*

14. **Horse railroad in street.** The owner of the fee of a public street is not entitled to compensation for the construction and operation of a horse railroad therein, in the absence of proof of special damages. 1870. *Hobart v. The Milwaukee City Railroad Company* (37 Wis. 194), IX, 461, and *note*, 465.

15. — That the owner of a store will be prevented by such railroad from unloading drays and wagons in front thereof, will not constitute such special damage. *Ib.*

II. ACTIONS FOR INJURIES FROM DEFECTS IN.

16. Neither a county nor a town is liable to a private action for injuries sustained by a traveler in consequence of neglect to repair a highway, unless made so by statute. 1870. *Town of Waltham v. Kemper* (55 Ill. 846), VIII, 652; *White v. County* (58 Ill. 297), XI, 65. *As to liability of incorporated villages and cities — See MUNICIPAL CORPORATION.*

17. **Notice of defect.** In an action against a city to recover damages for an injury sustained from a defect in a highway, it must be shown that the public authorities had notice of the defect, or that it was of such a nature, and had existed for such a length of time, that knowledge on their part must be presumed. 1869. *Goodnough v. City of Oshkosh* (24 Wis. 549), I, 202.

18. — Whether notice to the town of the existence of the defect can be inferred from the length of time it has continued, is a question for the jury. 1869. *Colley v. Inhabitants of Westbrook* (57 Me. 181), II, 80.

19. — Where a traveler is injured, without fault on his part, in consequence of the removal of planks from a bridge by unknown persons, the city, being bound to keep the bridge in repair, will be liable, although no actual notice of the defect is given, sufficient time having elapsed to render the condition of the bridge notorious. 1871. *Requa v. City of Rochester* (45 N. Y. 129), VI, 52.

20. — In an action against a municipal corporation for damages, resulting from the giving way of a bridge in consequence of latent defects, it appeared that the duty to repair was imposed upon the corporation by statute. *Held*, that as the latent defect causing the injury could have been detected by proper and careful examination, by skilled persons employed by the authorities, the corporation was liable. 1871. *Rapho and West Hempfield Townships v. Moore* (68 Penn. St. 404), VIII, 202.

21. — What notice of a defect in a street is sufficient to render a municipal corporation liable for injuries sustained thereby, see *note*, *Weisenberg v. City of Appleton*, VII, 89.

22. **Falling of sign.** For injury sustained by a traveler on a highway, from the falling upon him of some object from an adjacent building, as a sign insecurely

fastened, a town is not liable under the statute requiring towns to keep high ways in "good repair." 1866. *Taylor v. Peckham* (8 R. I. 349), V, 578.

23. — In an action against a city for injuries to plaintiff, a traveler, caused by the falling of a sign projecting over the sidewalk and insecurely fastened by the proprietor of the building to which it was attached, *held*, that plaintiff could not recover, although the insecurity of the sign and its dangerous position had been brought to the notice of the city authorities. 1870. *Jones v. Boston* (104 Mass. 75), VI, 194.

24. — Plaintiff's intestate was killed by the falling of a sign carelessly suspended over a street in defendant's city. *Held*, that the city was not liable. 1871. *Hovison v. City of New Haven* (87 Conn. 475), IX, 342.

25. *Falling sign—action against individual.* Defendant suspended a sign over a street in Boston, in violation of a public ordinance of the city. During an extraordinary gale the sign was blown down, and a bolt, part of the fastenings was hurled against plaintiff's window, causing damage, for which action was brought. *Held*, that defendant was liable, notwithstanding due care was exercised in constructing and fastening the sign. 1871. *Salisbury v. Herchenroder* (106 Mass. 458), VIII, 354.

26. *Snow and ice.* Mere slipperiness, arising from a smooth surface of snow and ice on a sidewalk, is not such a defect or want of repair as will render a city liable in damages for injuries sustained from a fall thereon. 1869. *Cook v. City of Milwaukee* (24 Wis. 270), I, 138.

27. — Where the gutters in a street are insufficient to carry off an unusually large quantity of water accumulated by artificial means, and the water overflows upon the walk and renders it slippery, the city will not be liable for injuries sustained thereby, unless it should appear that it was guilty of some subsequent negligence or default in not repairing the sidewalk thus rendered dangerous; or unless it be shown that the gutter was in such condition that the dangerous consequences to be apprehended from an overflow of the water was apparent. *Id.*

28. — *crossing sidewalk.* In an action against a town to recover for injuries sustained by a traveler by slipping on an icy ridge in crossing the sidewalk of a street from the carriage-way to a shop, the judge refused to charge that the town was not liable if a sidewalk, ten or twelve feet wide, was well constructed and so far clear from snow and ice as to make it safe and convenient for travelers to pass *along* on it, although there may have been a ridge of ice extending two feet and a half from the curb-stone, from four to six inches high in the highest part and with sloping sides, upon which plaintiff slipped in *crossing* the sidewalk. *Held*, that defendant had no ground for exception. 1870. *Street and wife v. Inhabitants of Holyoke* (105 Mass. 82), VII, 500.

29. — *light snow* was falling at the time of the injury, and concealed the defect. *Held*, that it did not relieve the town of liability. *Id.*

30. — *knowledge of husband.* In an action against a town by a husband and wife for injuries sustained by the wife by falling on an icy ridge, which was a defect in a sidewalk, *held*, that the husband's previous knowledge of the defect

and of his wife's intentions to stop at a shop where she would have to pass over the icy ridge, and his failure to caution her to beware of it, would not defeat the action. *Id.*

31. — **rule as to determining defect.** In an action against a city for injuries sustained by the plaintiff by slipping upon ice which had formed on the sidewalk in consequence of water dripping from a defective conductor, or the eaves of a building, the jury were instructed that the icy condition of the sidewalk, if produced from the operation of general causes, as by reason of atmospheric changes, would not constitute a defect for which the city would be liable; but that the same condition of the sidewalk, if produced from some local cause, as by a defective sewer, or by water dripping from the edge of a roof, might constitute a defect for which the city would be liable; that the question of defect depended upon whether the condition of the sidewalk was produced by general causes affecting a whole neighborhood alike, or by some special local cause affecting particular portions of the sidewalk. *Held*, that the distinction thus made was error, and that the question of defect must be determined by the condition of the sidewalk itself, in respect to that particular which is alleged to have caused the injury. 1869. *Billings v. Worcester* (102 Mass. 829), III, 480.

32. — Under what circumstances a municipal corporation will be liable for injuries occasioned by snow and ice on a sidewalk, considered. 1871. *Collins v. Council Bluffs* (32 Iowa, 324), VII, 200, and *note*, 206.

33. **Ice and snow falling from building.** The owner of a building so near the street, and of such shape and character that snow and ice collected upon the roof, in the natural course of things, falls down upon the sidewalk, and thereby injures a passer using due care, is liable for the injury; and this is so notwithstanding the rooms in the building are occupied by tenants, he having access to and control of the roof. 1870. *Shipley v. Fifty Associates* (106 Mass. 194), VIII, 818.

34. **Contributory negligence—fast driving.** Plaintiff was injured in consequence of a defect in the street while driving in his carriage at a rate exceeding six miles an hour (as was alleged) in violation of a city ordinance against fast driving. *Held*, that he could recover, the jury having found that the rate of speed did not contribute to the injury. 1870. *Baker v. Portland* (58 Me. 199), IV, 274.

35. **Defective bridge—contributory negligence.** Plaintiff's horse, while crossing a river on a highway bridge which defendant was bound to keep in repair, suddenly stopped, staggered, and fell over the side of the bridge, precipitating plaintiff to the ice below. There was no railing or barrier at the side of the bridge where the accident occurred. In an action by plaintiff against defendant for the injury, plaintiff was nonsuited. *Held*, error; on the grounds: (1) That plaintiff was not guilty of contributory negligence; and (2) that, if the jury should find that the injury would not have occurred but for a defect in the bridge, the town was liable, although the proximate cause was a momentary loss of control over the horse while upon the bridge, not attributable to the fault of any one. 1871. *Houfe v. Town of Fulton* (29 Wis. 296), IX, 568.

36. **When one injured cannot recover.** Plaintiff's horse, while he was backing it out of a shed where he had left it for convenience, backed into a gulf on the side of the highway, twenty feet from the traveled track. *Held*, that plaintiff could not recover damages from the town, for that the accident did not occur in using the highway for strictly traveling purposes, and that the gulf was not within the ordinary limits of the highway. 1871. *Sykes v. Town of Pawlet* (43 Vt. 446), V, 295.

37. **On discontinued highway.** Plaintiff was injured on a highway that had been legally discontinued by the town, but about which no railing, fence, or other warning to travelers had been put up. *Held*, that the town was liable under a statute making it liable for injuries from defects in its highway. 1870. *Munson v. Town of Derby* (37 Conn. 298), IX, 332.

38. **Where private parties are bound to repair.** The charter of the Pennsylvania and Ohio Canal Co. required it "to build and keep in good repair suitable and convenient bridges over the canal." One of the bridges, being defective, gave way while G. was driving over it, and he received injuries for which he brought suit. *Held*, that the company was liable, even without evidence of actual or willful negligence on its part, and that the jury, in estimating damages, properly considered G.'s pain of mind and body. 1870. *Pennsylvania and Ohio Canal Co. v. Graham* (63 Penn. St. 290), III, 549.

39. — A traveler was injured in crossing an unsound bridge on a highway and recovered damages from the town, the present plaintiffs; and, in an action to recover the amount of the judgment from the defendant, it appeared that the bridge was built by defendant's grantor over an artificial channel dug by him across the highway for the purpose of conducting water to his mills; that defendant was in possession of such channel and mills by deeds requiring him to keep the channel in repair, and that repairs had been made on the bridge by defendant's authority. *Held*, that defendant was liable. 1869. *Inhabitants of Woburn v. Henshaw* (101 Mass. 193), III, 333.

Damages for injuries in highway — See DAMAGES.

III. OBSTRUCTIONS AND NUISANCE.

40. **Obstruction — injunction.** Where it does not appear that a person will sustain any special or peculiar damage in consequence of the obstruction of a highway, an injunction to restrain such obstruction will not be granted at his suit. 1870. *Dawson v. The St. Paul Fire Insurance Co.* (15 Minn. 136), II, 109.

41. — The obstruction of a highway by a citizen is not a ground of civil action by an individual, unless he has suffered from it some special and peculiar damage, which is not experienced in common with other citizens. 1870. *Houck v. Wachter* (34 Md. 265), VI, 332.

42. — Where the damage alleged by plaintiff was that, having gone to F., by the highway, as he was returning home, he met an obstruction, a fence placed across the highway by defendant, and was withheld by defendant from removing it, and was, in consequence, "obliged to proceed to his farm by a very circuitous route to his loss and detriment," it was *held*, that this was insufficient to maintain the action. *Id.*

43. The owner of a warehouse, located on a street through which the railroad runs, has the right to unload goods from a car standing on the track, by means of skids, extending from the car to the warehouse; provided there is ample room to accommodate travel on the other side of the street, and the time occupied in unloading is reasonably short. The right of a railroad corporation to stop its cars in the street and unload them, in a reasonable time and manner, is incidental to the right of transit. 1870. *Mathews v. Kelsey* (58 Me. 56), IV, 248.

44. Objects calculated to frighten horses. Objects within the limits of a highway, naturally calculated to frighten horses of ordinary gentleness, may constitute such deficiencies in the way as to render the town liable, even though so far removed from the traveled path as to avoid all danger of collision. An instruction to the jury to the contrary of this rule is erroneous. 1870. *Foshay v. Glen Haven* (25 Wis. 288), III, 78.

45. — Objects in a highway likely to frighten horses of ordinary gentleness may be nuisances. 1872. *Ayer v. City of Norwich* (39 Conn. 376), XII, 396

46. Steam whistle near highway. Plaintiff's horse was frightened by the blast from a steam whistle on defendant's mill, situated some fifty feet from the highway. Held, that the defendant was liable. 1871. *Knight v. Good year India Rubber Glove Manufacturing Co.* (38 Conn. 488), IX, 406.

HOMESTEAD EXEMPTION LAWS.

1. Laws exempting homesteads from execution from debts "heretofore contracted," held, in violation of the constitution of the United States. 1872 *Homestead Cases* (22 Gratt. Va., 266), XII, 507.

2. — The homestead exemption law of North Carolina held constitutional as to debts previously contracted, on the ground that it was a restriction on former exemptions. 1878. *Garrett v. Cheshire* (69 N. C. 396), XII, 647.

See EXEMPTION.

HOMICIDE — See CRIMINAL LAW.

HOUSE.

How far a man is justified in defending his house by means of deadly weapons —
See CRIMINAL LAW.

HUSBAND AND WIFE — See MARRIAGE.

ICE.

Under a statute making it an indictable offense to remove, without license, from the lands of another, "any tree, stone, timber, or other valuable article," held, that ice formed in a stream not navigable was a part of the realty, and a "valuable article." 1870. *State v. Pottmeyer* (33 Ind. 403), V, 224.

See HIGHWAYS.

INCOME — See TRUST.

INCUMBRANCE—*See* COVENANT.

INDEMNITY.

The plaintiff had delivered to the defendants goods, subject to a lien for freight charges in favor of C. — from whom plaintiff had received them — without collecting such charges, upon receiving from the defendants a bond conditioned to indemnify the plaintiff "against any legal liability which he may have incurred" by so doing. Judgment was recovered by C. against the plaintiff for the amount of such charges and costs, but it did not appear that it had been paid. In an action upon the bond, *held*, that the plaintiff could not recover, as there was no proof of actual damage. 1870. *Weller v. James* (15 Minn. 461), II, 150.

See STATUTE OF FRAUDS; SURETY.INDICTMENT — *See* CRIMINAL LAW.

INFANCY.

1. **Covenants of infant.** The defendant, while an infant, purchased certain mortgaged real estate, and in the deed to her covenanted to pay the mortgage. She thereafter sold the real estate at an advanced price. Some years after she became of age, the mortgage was foreclosed by action, in which she was made a party and appeared. A judgment thereon, for deficiency, was entered against her grantor. *Held*, that the covenant was voidable on the part of the defendant, and that a retention of the fruits of her sale after she became of age was not an act in affirmance of the contract, nor was the appearance in the foreclosure suit an act tending to ratify her obligation. 1870. *Wales v. Powers* (43 N. Y. 23), III, 654.

2. **Contract for services.** A minor who has agreed to work for a manufacturing corporation at least six months, and not to leave without giving two weeks' notice, but does leave without giving such notice, is not liable to have the damages occasioned thereby deducted from the amount he otherwise would be entitled to recover for his labor. 1870. *Derocher v. Continental Mills* (58 Me. 217), IV, 286.

3. **Liable for stolen property.** An infant is liable in assumpsit for money stolen by him, or for the proceeds of stolen property when converted into money. 1870. *Shaw v. Coffin* (58 Me. 254) IV, 290.

4. **Commitment of, to reform school.** An act providing for the commitment to a "reform school" of children between six and sixteen years of age, "who are vagrants or destitute of proper parental care," *held*, unconstitutional. 1870. *People v. Turner* (55 Ill. 280), VIII, 645.

5. **Defense of infants.** In an action on the case in which it was alleged that the defendant, having hired the plaintiff's horse, drove him so carelessly and immoderately as to cause death, defendant pleaded at the time he was an infant. *Held*, that the plea was good. 1870. *Eaton v. Hill* (50 N. H. 235), IX, 189; *see, also, ib.* 80.

6. **Recovery by parents of money paid by infants.** Plaintiff's infant son bought of the defendant cigar-holders and tobacco-pipes and paid for them. Afterward, plaintiff's wife—the mother of the child—went, with the boy to defendant, tendered back the articles, and demanded the money paid for them, which was refused. *Held*, that plaintiff could recover the money, and that demand by plaintiff's wife was sufficient. 1878. *Seguin v. Peterson* (45 Vt. 255), XII, 194.

7. — **Contributory negligence by infants considered.** 1870. *Kerr v. Forgue* (54 Ill. 483), V, 146, and *note*, 148.

Negligence of, and of parent — See NEGLIGENCE; PARENT AND CHILD.

INJUNCTION.

1. **Obstruction of highway.** An injunction will not be granted to restrain the obstruction of a highway at the suit of one who does not show that he will sustain special damage. 1870. *Dawson v. St. Paul Fire Ins. Co.* (15 Minn. 186), II, 109.

2. **Restraining collection of foreign judgment.** The courts of one State may enjoin a citizen thereof from enforcing the collection of a judgment which he obtained in the courts of another State, and which he is endeavoring to collect in such other State. 1869. *Engel v. Scheuerman* (40 Ga. 206), II, 578.

3. **Of suits and actions.** Where parties commence proceedings in a State court, and in the course of litigation are enjoined from further action until certain matters are disposed of, it is a violation of the injunction order to institute proceedings in the United States court involving the matters enjoined; and the State court has power to punish the disobedience of its orders, although it cannot require the parties to dismiss their suit in the United States court. 1869. *Hines v. Hobbs* (40 Ga. 856), II, 581.

4. **As to covenants in restraint of tort.** A court of equity will restrain by injunction breach of a covenant not to carry on a certain kind of business in a certain place. 1870. *Guérard v. Dandolet* (83 Md. 561), III, 164.

See CORPORATION; HIGHWAYS.

INNKEEPER.

1. **An innkeeper's liability arises from the nature of his employment.** He is bound to take all possible care of the goods of his guests, intrusted to him or his servants. 1869. *Houser v. Tully* (62 Penn. St. 92), I, 390.

2. — Where a guest deposits money on the credit of the inn, with a person acting as barkeeper, the innkeeper is liable for its loss, and whether the deposit was made on such credit is a question for the jury. *Id.*

3. **An innkeeper is bound to extraordinary diligence in preserving the property of his guest intrusted to his care, where the guest has complied with all reasonable rules of the inn.** And if the guest, on departing from the inn, leaves his or her baggage with the innkeeper, with his consent, he is liable for its safe-keeping as an innkeeper, for a reasonable time, according to the circumstances of the case. 1870. *Adams v. Olem* (41 Ga. 65), V, 524.

4. **Liability to loss of personal valuables.** By an act of the legislature of 1855, it was provided that "whenever the proprietor or proprietors of any hotel shall provide a safe in the office of such hotel, or other convenient place, for the safe-keeping of any money, jewels or ornaments belonging to the guests of such hotel, and shall notify the guests thereof, by posting a notice (stating the fact that such safe is provided, in which such money, jewel or ornaments may be deposited) in the room or rooms occupied by such guest in a conspicuous manner, and if such guest shall neglect to deposit such money, jewels or ornaments in such safe, the proprietor or proprietors of such hotel shall not be liable for any loss of such money, jewels or ornaments, sustained by such guest, by theft or otherwise." In an action to recover the value of a gold watch, with the chain, seal and key attached, valued at \$350, and \$50 in money stolen from the plaintiff's room at defendant's hotel, during the night, *held*, that if the notice was posted according to law, and the safe provided, the plaintiff could recover for the property stolen, but not for the money. 1871. *Rumaley v. Leland* (43 N. Y. 539), III, 723.

5. **Liability for deposits.** A guest at a hotel in New York State delivered a sealed envelope to the proper servant, stating that "it contained money." The package contained \$20,000, but had no indorsement of the amount upon it, and was stolen from the safe. By the law of 1855, the proprietor of a New York hotel may provide a safe, to be kept at the office, and notify his guests that they may deposit their money, jewels or ornaments therein by posting a notice in the room of the guest; and the neglect of the guest to deposit such articles relieves the proprietor from liability for loss. In an action to recover for the money, *held*, that the proprietor was liable for the whole amount of money deposited. 1870. *Wilkins v. Earle* (44 N. Y. 172), IV, 655.

See DAMAGES.

INSANITY.

1. **The party contracting with an insane person is estopped from alleging his want of capacity.** 1869. *Allen v. Berryhill* (37 Iowa, 534), I, 309.

2. **Evidence.** Witnesses who are not experts cannot give their opinion on the question of sanity. *Dow, J., dissenting. State v. Pike* (49 N. H. 399), VI, 533. 1871. *See contra, Pidcock v. Potter* (68 Penn. St. 342), VIII, 181.

3. **The guardian of an insane person is a substitute for his ward with reference to all his interests, and has the right to change his domicile and to fix the locality of his person.** 1869. *Anderson v. Estate of Anderson* (42 Vt. 350), I, 334.

4. **The committee of a lunatic widow cannot make an election for her between the provision made for her, in the will of her husband, and her dower at common law, without the sanction of the court.** 1870. *Kennedy v. Johnston* (65 Penn. St. 451), III, 650.

5. — **Insanity and insane delusion discussed.** 1871. *State v. Jones* (50 N. H. 369) IX, 242.

6. **Arrest of insane person.** An officer is not authorized to arrest a man without a warrant, on the ground that he is insane unless he is dangerous. 1871. *Look v. Dean* (108 Mass. 116), XI, 823.

See CRIMINAL LAW; WILLS.

INSOLVENT LAWS.

1. The State insolvent laws were not nullified, superseded or suspended by the bankruptcy law, and jurisdiction may be exercised under the former, at least, until proceedings have been instituted under the latter. 1871. *Reed v. Taylor* (82 Iowa, 209), VII, 180, and *note*, 183. 1867. See, *contra*, *Matter of Reynolds* (8 R. I. 485), V, 615.

2. — A voluntary assignment by a debtor for the benefit of his creditors, under a State insolvent law, before the commencement of bankruptcy proceedings, is not void nor voidable, unless such proceedings be begun within six months. 1871. *Maltbie v. Hotchkiss* (38 Conn. 80), IX, 304, and *note*, 369.

3. **Discharge when a bar.** When a contract is made between two citizens of the same State, within the State, and one of them afterward removes therefrom and becomes a citizen of another State, and the other then obtains a discharge under the provisions of an insolvent law of the State where the contract was made, which was enacted and in force before the date of the contract, such discharge is a bar to a suit upon the contract. 1868. *Stoddard v. Harrington* (100 Mass. 87), I, 92.

4. **Invalid against non-resident creditors.** A non-resident and non-assenting creditor is not bound by the debtor's discharge under State insolvent laws, no matter where the debt originated or was made payable. The citizenship of the parties governs, and not the place where the contract was made or was to be performed. 1869. *Hawley v. Hunt* (27 Iowa, 303), I, 273.

5. — The discharge of the defendant, under the insolvent laws of New York, will not bar a suit upon judgments recovered against him in the State of New York, and, previous to his application for discharge, assigned to a citizen of Iowa. *Id.*

6. **The liability of the maker of a promissory note,** to a non-resident, is not affected by the discharge under the insolvent laws of New York, obtained subsequent to the inception of the note. 1871. *Pratt v. Chase* (44 N. Y. 597), IV, 718.

7. **Where a trustee of an insolvent's estate refuses to initiate proceedings to annul a fraudulent conveyance made by the debtor, and the creditors are thereby compelled to institute such proceeding in their own behalf, and the conveyance is set aside, counsel fees are a proper charge against the trust fund.** 1869. *Matter of Leiman* (82 Md. 225), III, 132.

See INSURANCE; LIMITATION OF ACTIONS.

INSURANCE.

I. GENERAL PRINCIPLES.

II. ACCIDENT INSURANCE.

III. FIRE INSURANCE.

1. *Generally.*
2. *Contract of.*
3. *Powers of agents.*
4. *Insurable interest.*
5. *Representations and concealments.*
6. *Conditions and provisions in policy.*
7. *Notice and proof of loss.*
8. *Payment of loss. Who entitled to its benefits.*
9. *Mutual companies.*

IV. LIFE INSURANCE.

1. *Contract. When complete.*
2. *Agents.*
3. *Representations and concealments.*
4. *Conditions.*
5. *War—effect of on contract of insurance.*
6. *Miscellaneous.*

V. MARINE INSURANCE.

I. GENERAL PRINCIPLES.

1. **Company bound by acts of agents.** Local agents of foreign insurance companies, appointed by a general agent located without the State, are to be considered general agents, and corporations represented by them are bound by their acts within the scope of the general authority they possess, though in violation of limitations upon that authority not brought home to knowledge of party dealing with them. 1869. *Miller v. Phoenix Insurance Co.* (27 Iowa, 208), I, 262.

2. — Where a policy of insurance requires that certain facts must be stated in the application by the assured, and the facts are made known to the agent of the company, who omits to reduce them to writing, the company cannot escape liability on the ground that the requirement of the policy has not been complied with. 1869. *Commercial Ins. Co. v. Spankneble* (52 Ill. 53), IV, 582; *Miller v. Mutual Benefit Life Insurance Co.* (31 Iowa, 216), VII, 664.

3. **The powers of an agent,** whose duty it is to take and revoke risks, include the power of consenting to a prior or subsequent insurance on the property. 1869. *Carrugi v. Atlantic Fire Ins. Co.* (40 Ga. 185), II, 567.

4. — A policy of insurance requiring that consent to subsequent insurance upon the same property should be in writing, will not be rendered void when the agent of the company gives such consent *verbally*, and the insured, in good faith, acts upon it. *Id.*

5. **An insurance agent can authorize his clerk** to contract for risks, to deliver policies, to collect premiums and to take in payment thereof cash or securities, and to give credit for premiums or to demand cash. And the act

of the clerk, in all such cases, is the act of the agent, and binds the company as effectually as if done by the agent in person. 1872. *Bodine v. Exchange Fire Ins. Co.* (51 N. Y. 117), X, 566.

6. **Verbal contract.** An oral contract to issue a policy of insurance is binding and may be specifically enforced or the court may award damages the same as in an action on an executed policy. 1869. *Security Fire Ins. Co. v. Kentucky Marine Ins. Co.* (7 Bush. Ky. 81), III, 801.

7. — A provision in a company's charter requiring that "all policies and contracts of insurance * * * shall be subscribed by the president," relates only to executed insurances, and does not abridge the common-law right to make an oral executory contract for insurance. *Id.*

8. — Where the incorporating act of an insurance company declares that all applications shall be written, that all the conditions of policies shall be printed or written, and that all policies or other contracts shall be signed by the president, no verbal contract of insurance is binding on the company. 1871. *Henning v. The United States Ins. Co.* (42 Mo. 425), IV, 332.

9. — Parol contracts of insurance are valid. 1872. *Ellis v. Albany City Ins. Co.* (50 N. Y. 402), X, 495, and note, 502.

10. — Authority to an agent of an insurance company to make all necessary surveys, and to determine the risk and its duration, and the rate of premium, without consulting the company or its officers; in short, to negotiate and conclude all the terms of the contract, and to consummate it by filling up and countersigning the policy, necessarily includes the power to make a preliminary contract for the issuing of a policy. *Id.*

11. — An agent clothed with unrestricted authority to negotiate a contract of insurance, having agreed, by parol, upon the terms of an insurance, and to issue a policy therefor, and having received the premium, and entered the contract in his register, the company is liable for his failure to perform such contract. *Id.*

12. — M. being the agent for several insurance companies, including the defendant, was applied to by the plaintiff for an insurance upon a quantity of cotton. M. agreed to insure, and the amount to be insured, and the premium, were fixed. He decided to place \$6,100 with the defendant, entered the contract to that effect in his register, received the premium, and credited it to defendant, and, before the loss, reported the contract and paid over the premium to the defendant. *Held*, that this was, in substance, a contract to issue a policy for the amount, and was binding upon the defendant. *Id.*

13. **Burden of proof.** An express warranty in a policy of insurance is a condition precedent, the burden of proving performance of which rests upon the assured. 1868. *McLoon v. Commercial Mutual Insurance Co.* (100 Mass. 473), I, 129.

14. — The burden of proving a loss from a cause, and to an amount for which insurers are liable, is upon the assured. 1871. *Cory v. Boylston Fire Insurance Co.* (107 Mass. 140), IX, 14.

15. **Removal of cause.** A non-resident insurance company, by accepting process as required by statute, is not deprived of the right to have a cause removed from a State to a Federal court. 1869. *Knorr v. Home Ins. Co.* (25 Wis. 143), III, 26; *Morton v. Mutual Life Ins. Co.* (105 Mass. 141), VII, 505; see *contra*, *People v. Judge* (21 Mich. 577), IV, 504.

16. A statute requiring a foreign insurance company, as a condition to doing business within the State, to agree not to remove a suit from the State court into the Federal court, *held* constitutional. *Morse v. Home Ins. Co.* (30 Wis. 496), XI, 580; reversed by the supreme court of the United States, October term, 1874, 10 Alb. Law Jour. 377, on the ground that the statute was unconstitutional.

17. A foreign insurance company cannot, without first complying with the laws of Illinois enacted for their regulation, make contracts which it may enforce; and where the company fails to file the statement of its condition and the consent of the auditor to transact business within the State, as required by law, the company cannot recover on a note given in such State, for stock and premiums, notwithstanding the law imposes a penalty for doing business in such State, in violation of its provisions. 1870. *The Cincinnati Mutual Health Assurance Co. v. Rosenthal* (55 Ill. 85), VIII, 626.

II. ACCIDENT INSURANCE.

18. **Accident—what is.** A policy of insurance provided for cases where the insured should sustain "personal injury caused by any accident * * * and such injury shall occasion death." In an action on the policy the court charged, in effect, that if the injury, being produced by accident but not causing death, did cause the deceased to fall into the water, where he died from drowning, then the death was accidental within the meaning of the policy. *Held*, correct. 1871. *Mallory v. Travelers' Insurance Co.* (47 N. Y. 52), VII 410, and *note*, 414.

19. — An accident insurance policy was issued containing a stipulation that the insurance should not embrace any "death caused by natural disease, surgical operation, unreasonable imprudence." While the insured, who used to be a farmer, was pitching hay in the field of a relative whom he was visiting, the handle of the pitchfork slipped through his hands and struck him in the bowels, inflicting an injury which produced peritoneal inflammation, in consequence of which he died. *Held*, that this was a case of death resulting from an injury occasioned by "accident." 1871. *The North American Life and Accident Insurance Co. v. Burroughs* (69 Penn. St. 43), VIII, 212, and *note*, 218.

20. **Preliminary proof.** Where a policy does not require that the preliminary proof shall give the mode and manner of death, but merely proof of the injury, and that the death was occasioned by such accidental injury, *held*, that the plaintiff may recover, although the preliminary proofs unwittingly ascribe the injury to a wrong cause. *Ib.*

21. **While traveling in a public conveyance.** The plaintiff's intestate held a policy by which defendant agreed to pay a certain sum in event of intestate's

death, etc., "when caused by any accident while traveling by public or private conveyances provided for the transportation of passengers. The defendant in prosecuting a journey, while passing on foot by the usual route from a steamboat landing to a railway station about seventy rods distant, slipped and fell, from which she received injuries causing death. *Held*, that such injury and death were within the terms of the policy. An injury received while necessarily walking in the actual prosecution of a journey is received while traveling in a public conveyance within the meaning of the policy, when such walking is the actual and necessary accompaniment of such travel. 1871. *Northrup v. Railway Passenger Assurance Co.* (43 N. Y. 516), III, 724; see *contra*, *Ripley v. Ins. Co.*, 16 Wall. 886.

22. **Negligence.** In an action upon a policy of insurance against accident, the question whether or not the injured party was guilty of negligence contributing to the accident, does not arise. 1869. *Schneider v. The Provident Life Insurance Co.* (34 Wis. 28), I, 157.

23. — Where the plaintiff was killed, while attempting to get upon a train of cars in slow motion. *Held*, that it was not such wanton exposure as would excuse the company from liability under a provision in the policy that the company should not be liable for any injury happening to the assured by reason of his "willfully and wantonly exposing himself to unnecessary danger or peril." *Ib.*

24. The proceeds of an accident insurance policy cannot be claimed in reduction of damages by a town in an action against it for injuries received from a defect in a highway. 1871. *Harding v. Town of Townsend* (43 Vt. 536), V 804. See, also, 1869. *Clark v. Wilson* (108 Mass. 219), IV, 532.

III. FIRE INSURANCE.

1. Generally.

25. **Liability of insurer for damages caused by removal of goods.** Where insured goods are removed from a building apparently in imminent danger of being destroyed by fire, the insurers are liable for the reasonable damages and expense of removal, although the building is not in fact burned. 1869. *White v. Republic Fire Insurance Co.* (57 Me. 91), II, 22.

26. **Negligence of insured.** The plaintiff's buildings, which were insured, were intentionally set on fire by his wife, who was insane, and who had been left alone by the plaintiff. It appeared that she had frequently been left alone before this occasion. In an action on the policy of insurance, *held*, that the plaintiff, in leaving his wife alone, had not been guilty of such a degree of negligence as would constitute a defense for the defendants. 1868. *Gove v. The Farmers' Mutual Fire Insurance Co.* (48 N. H. 41), II, 168.

27. Where a mortgagee of premises applies for an insurance, and subsequently becomes owner in fee, no new consideration is necessary to change the proposed insurance so as to apply to the absolute interest of the applicant. 1871. *Fisk v. Cottonet* (44 N. Y. 538), IV, 715.

28. The discharge, under the insolvent laws of a State, of a person insured against fire, being in effect a release of liability upon the premium note, the

company is no longer bound by its contract, and he cannot recover in case of loss by fire. Nor does the fact that the company received the interest upon the note during the pendency of proceedings in insolvency amount to a waiver of their right to treat the policy as void, it appearing that they had no actual notice of the proceedings until after the last payment of interest. 1870. *Reynolds v. Mutual Fire Insurance Company of Cecil County* (84 Md. 380), VI, 337.

29. **Proceeds of policy not applicable to reduction of damages against wrong-doer.** Plaintiff's buildings were burned by the negligence of the defendant. *Held*, that the plaintiff was entitled to recover of defendant their entire value, notwithstanding the fact that the insurer of the building had paid plaintiff the amount of the insurance. 1873. *Webber v. Morris & Essex R. R. Co.* (35 N. J. 409), X, 258. See *supra*, pl. 24.

30. **Where the property was vested in a testamentary trustee, in trust for the heirs of the former owner, and such trustee, being authorized by the will to do so, insured the property for the benefit of the "heirs and representatives" of her testator, held**, that the trustee, although not named in the policy, could enforce it for the benefit of the beneficiaries under the will. 1873. *Savage v. Howard Ins. Co.* (53 N. Y. 502), XI, 741.

2. Contract of.

31. **When takes effect.** Plaintiff, at the solicitation of the agent of a fire insurance company, signed an application for a policy wherein it was provided that the policy should take effect from the day the application was approved, and gave his note for the premium. The agent gave a receipt for the note, at the same time promising plaintiff that the policy would take effect from the date of the application. The application was sent to the principal office, and was rejected; but, before the agent had informed plaintiff of the failure of the negotiations, the property proposed to be insured was destroyed by fire. *Held*, that there was no valid contract of insurance. 1870. *Winnecheik Ins. Co. v. Holzgrafe* (58 Ill. 516), V, 64.

32. **Contract — when insurer bound for loss before date of contract.** When the property is distant and its *status* unknown to either party, an insurance against fire will bind the insurer for a loss occurring before the date of the contract, if such appears, either from the policy or from attending circumstances, to have been the intention of the parties. 1869. *Security Fire Ins. Co. v. Kentucky Marine Ins. Co.* (7 Bush. Ky. 81), III, 301.

33. **Parol contract.** F. entered into verbal negotiations with the agent of an insurance company for a policy of fire insurance. The agent was authorized "to bind the company during the correspondence," but, through his neglect, the company did not receive and act upon the application of F., until a loss by fire had occurred. *Held*, that the company was liable, a parol contract of insurance being valid under the New York decisions. 1871. *Fisk v. Cottonet* (44 N. Y. 538) IV, 715. See *supra*, pl. 6.

34. **Application — pleading.** A policy of fire insurance was indorsed with the following condition: "The basis of this contract is the application of the insured, and if such application does not truly describe the property, this pol-

icy shall be null and void." The application concluded as follows: "And the said applicant hereby covenants and decrees * * * that the foregoing is a just, full and true exposition of * * * the condition, situation and risk of the property to be insured, so far as the same are known to the applicant and are material to the risk." In an action on the policy, *held*, that the application was a part of the contract, and in the nature of a warranty or condition precedent; also, that it was necessary for the plaintiff to set out the application in his complaint, and aver and prove the observance of the warranty or condition. 1872. *Bobbitt v. The Liverpool and London and Globe Insurance Company* (66 N. C. 70), VIII, 494.

35. **What policy avers.** The Baltimore Fire Insurance Co. issued a policy of insurance to railway company, insuring "two Murphy & Allison passenger cars, contained in car house No. 1, and engine, J. H. Nicholson, contained in engine house No. 2." One of the cars and the engine, described in the policy, having been subsequently damaged by fire while making a regular trip on the line of the railway, in an action on the policy, *held*, that the words "contained in," were designed to restrict the risk to the property, while actually inside of the car and engine houses, specified in the policy; and that the railway company could not recover for the loss. 1869. *Annapolis, etc., R. R. Co. v. Baltimore Fire Insurance Co.* (83 Md. 87), III, 112.

36. **What policy covers — evidence of intent.** A policy of insurance on a building, and "the stock, lumber and goods manufactured, and in process of manufacture in said building," will not cover lumber and stock piled in the adjoining yard, nor is parolevidence admissible to show the intent of the parties to include such lumber and stock. 1871. *North American Fire Insurance Company v. Throop* (22 Mich. 146), VII, 638.

37. **A renewal of a policy of fire insurance is, in effect, a new contract of insurance, and, unless otherwise expressed, on the same terms and conditions as the original policy; and a notice that the insured premises had become vacant, required and given under the original policy, should be given again under the renewed policy, the same state of vacancy continuing.** 1870. *Hartford Fire Ins. Co. v. Walsh* (54 Ill. 164), V, 115.

38. **Indorsements — effect of.** A obtained a policy of fire insurance on his museum building and collections, and, before the expiration of the policy, he sold the insured property to B. The acting secretary of the insurance company then indorsed on the policy the words "loss, if any, payable to B." Afterward B sold the museum collections, and the president of the company made an additional indorsement on the policy in the words "this policy is hereby changed to cover chairs, benches and furnaces, instead of museum collection, which is removed." *Held*, that the indorsements constituted valid contracts of insurance and that the company were liable thereon. 1871. *Northrup v. The Mississippi Valley Ins. Co.* (47 Mo. 435), IV, 337.

39. **Promise to pay — mutuality.** A policy of insurance on a cargo did not cover the loss on cider frozen in the vessel; but the company promised the insured if he would go and take charge of it, and sell it to the best advantage, they would pay the deficiency, whereupon the insured complied, but the com

panty declined to pay. *Held*, that the insured could recover the deficiency by action. 1871. *Willits v. Sun Mutual Ins. Co.* (45 N. Y. 45), VI, 81.

40. Partnership property — reforming policy. Where a policy of insurance, negotiated on behalf of a firm by an individual partner, is made out by mistake in the name of the partner applying instead of the partnership, a court of equity will decree its reform so as to cover the partnership interest, even after loss. 1869. *Keith v. Globe Ins. Co.* (52 Ill. 518), IV, 624.

41. Policy — error in. The partnership property of A & B, partners, was insured by defendants. A, having purchased B's interest in the property, applied to defendants' agent for re insurance. The agent, knowing of the sale from B to A, promised to have the property re-insured in A's name. Subsequently he gave to A a paper, which the latter supposed to be a new policy, and for which he paid the regular premium and laid away without examining. The paper was in reality only a renewal of the old policy to A & B. Loss having occurred, *held*, that the company was liable in a suit in A's name. 1870. *Pierce v. Nashua Ins. Co.* (50 N. H. 297), IX, 235.

42. Insurance on agent's property. A fire insurance company issued a policy of insurance on the goods of its agent who, on the day of its receipt, made an entry in his book of accounts with the company of the amount chargeable against him for the premium. He forwarded no letter of acceptance nor any part of the premium, inasmuch as it was not the custom to forward remittances pertaining to his agency until the end of the month. The next day the goods were destroyed by fire, whereupon he immediately announced the loss to the company. *Held*, that the company was liable on the policy. 1871. *Lungstrass v. German Insurance Co.* (48 Mo. 201), VIII, 100.

8. Powers of agents.

43. When company bound by knowledge and acts of agents. The defendants issued a policy of insurance on plaintiff's factory upon a written application, signed by him, wherein it was set forth, in answer to printed interrogatories, that the premises were worked during certain hours, that a night-watchman was always on duty, and that there was a force pump on the premises for putting out fires, and that it was always in condition for immediate use. The defendant's agent who effected the insurance was informed by the plaintiff at the time, that the factory was not run during the winter season, and that there was then no watchman kept, nor pump ready for use. The agent himself filled up the application, and wrote down such portion of plaintiff's answers as he considered material. The policy provided that "the company will be responsible for the accuracy of surveys made by its agents." The factory having been burned during the winter season, the company denied its liability on the ground that the undertaking of the plaintiff regarding watchman and pump had not been complied with. *Held*, that the defendants were liable. 1870. *May v. Buckeye Mutual Ins. Co.* (25 Wis. 291), III, 76.

44. The Aetna Insurance Company issued its policy of fire insurance to A, containing a provision that the "application * * * should be considered a part of this policy and a warranty by the insured." The application contained

the following interrogatory and corresponding answer: 9. Incumbrances, if any, state the amount. Is there any insurance by the mortgagees? State the amount. 9. "No." It appeared that there were then two mortgages on the premises; that A told the agent of the company who negotiated the insurance of these incumbrances, and that the answer "no" was given by the advice and consent of the agent, because the mortgagees had no insurance. *Held*, that the acts of the agent bound the company, and the policy was valid. 1870. *Ætna Live Stock v. Olmstead* (21 Mich. 246), IV, 468. See *supra*, pl. 1.

45. Knowledge communicated to agent. A policy of insurance was issued on an application filled out by the agent. In it was the statement that the property was incumbered for a certain sum only and it was provided that the statements should be regarded as warranties. The property was incumbered beyond the sum named. *Held*, that parol evidence was admissible to prove that the agent was correctly informed concerning the incumbrances at the time of taking the risk, and that he prepared the application after such information was given him. 1871. *North American Insurance Co. v. Throop* (22 Mich. 146), VII, 688.

4. Insurable interests.

46. A qualified interest in property, or any interest which would be recognized by a court of law or equity, is an insurable interest. 1871. *Warren v. Davenport Fire Insurance Co.* (31 Iowa, 464), VII, 160.

47. The owner of stock in a corporation, organized for pecuniary profit, has an insurable interest in the corporate property. *Id.*

48. On property "sold but not removed." A policy of fire insurance was issued on property "sold but not removed." A loss having occurred, in an action by the insured, *held*, that property, the legal title to which had passed to the vendee, but which had been left in the possession of the insured by consent of the vendee, free of charge, was covered by the policy; and that the insured could recover, in trust for the vendee. 1871. *Waring v. The Indemnity Fire Insurance Co.* (45 N. Y. 606), VI, 146.

49. Judgment creditors. A judgment is a general and not a specific lien, and the judgment creditor has no insurable interest in specific property of his debtor. 1869. *Grovenmeyer v. Southern Mutual Fire Insurance Co.* (62 Penn. St. 340), I, 420.

50. Consignee. In an action on a policy of insurance, the petition alleged that the plaintiffs, being the owners of a quantity of ice, consigned it to S. & K. to be sold by them on commission; that plaintiffs ordered the consignees to have the ice insured, which they agreed to do, but, instead of insuring it in the names of plaintiffs, they made the insurance in their own names; that a portion of the ice was lost by a peril provided against, and the consignees assigned the policy to plaintiffs. Defendants demurred, on the ground that the consignees had no insurable interest in the ice, and the demurrer was sustained. *Held*, error, because when a consignee accepts a consignment, with instructions from his principal to insure for their benefit, it becomes his duty to insure, and if he neglects to do so, and a loss occurs, he is liable. 1872. *Shaw v. Ætna Insurance Co.* (49 Mo. 578), VIII, 150, and *note*, 151.

51. **Mortgagee.** In a policy of fire insurance, which provides that if the interest of the insured in the property be any other than the entire, unconditional and sole ownership, it must be so expressed in the policy, the interest of a mortgagee is sufficiently described by calling him "mortgagee." 1871. *Williams v. Roger Williams Insurance Co.* (107 Mass. 377), IX, 41.

52. — L. & S., the mortgagees of certain premises, assigned the mortgage and indorsed the mortgage notes to plaintiff, and procured the premises to be insured in their names as mortgagees, loss, if any, payable to plaintiff. Some of the notes were not paid at maturity, the others had not matured when loss occurred. *Held*, that L. & S. had an insurable interest, and that plaintiff could recover. *Ib.*

53. — proof that the insured was in possession of the premises, claiming and occupying it as owner, is, in the absence of evidence to the contrary *prima facie* evidence of title and of an insurable interest. 1873. *Franklin Fire Ins. Co. v. Chicago Ice Co.* (36 Md. 102), XI, 469.

5. Representations and concealments.

54. A representation in an application for a policy of fire insurance need not be both fraudulent and false to vitiate the insurance; it is sufficient that the representation be false. 1872. *Bobbitt v. Liverpool, London & Globe Ins. Co.* (66 N. C. 70), VIII, 494.

55. **As to interest of the assured.** A condition in a policy was that "if the interest in property to be insured be a 'leasehold' interest, or other interest not absolute," it must be so represented. *Held*, that the interest of a mortgagor in the mortgaged property was absolute within the meaning of the policy, and no explanation of that interest was required. 1870. *Washington Fire Ins. Co. v. Kelly* (32 Md. 421), III, 149.

56. — A mortgagor of property procured a policy of insurance thereon, in the name of the mortgagee, in pursuance of an agreement to furnish further security. No statement of the interest of the assured in the property was requested when the insurance was effected, but the policy contained a clause providing that the company should not be liable "for loss of property owned by any other party unless the interest of such party be stated in the policy." The mortgagor paid the premium, and afterward paid the debt. A loss having occurred, in an action on the policy, *held*, that the mortgagor could recover in the name of the mortgagee and that the assured was not bound by the policy to disclose the nature and extent of his interest. 1869. *Norwich Fire Ins. Co. v. Broomer* (52 Ill. 442), IV, 618

57. — Where a married woman insures her realty which she acquired before coverture, the existence of the marriage relation need not be stated in the application for a policy of insurance, which requires a statement of the interest of assured when it is "not an absolute ownership." Her estate continues to be absolute after marriage, although the husband is entitled to a joint occupancy and a contingency by courtesy. 1869. *Commercial Ins. Co. v. Spannable* (52 Ill. 53), IV, 582.

58. Misrepresentation—as to interest—assignment. A partnership was formed, under which D. put in “his mill property, etc., as his part of the capital of the concern.” The mill property was not conveyed to the partnership, nor to any person in trust for the partnership. The firm applied to an insurance company to have the mill property insured, representing it to be *theirs* in their application. A policy was issued to the firm upon the condition that, if the interest of the assured in the property be other than entire, unconditional and sole ownership, it must be so represented to the company and so expressed in the written part of the policy, or otherwise the policy is void. Subsequently an assignment of the policy to D. was made with the consent of the company. A loss by fire having occurred, in an action on the policy, *held*, (1) that the policy was void from the beginning, on account of misrepresentation of the interest of the assured in the application; and (2) that it was equally void in the hands of the assignee, the mere assent of the assurers to the assignment giving no force and vitality to the policy which was before void in the hands of the assignors. 1871. *Citizens' Fire Insurance Co. v. Doll* (85 Md. 89), VI, 380.

59. Interest of assured. A person in possession of premises, under a contract of purchase, having paid only part of the purchase-money, the rest not being due, obtained a policy of fire insurance on the premises, and in his written application, which was made a part of the policy, answered the questions propounded as follows: Question. “Is the property owned and operated by the applicant?” Answer. “Yes.” Question. “Is any other person interested in the property; if so, state the interest?” Answer. “No.” Question. “Incumbrance; is there any on the property?” Answer. “Held by contract. *Held*, that the answers were substantially true, and that the policy was not avoided for false representations. 1871. *Lorillard Fire Ins. Co. v. McCulloch* (21 Ohio St. 176), VIII, 52.

60. Valuation when conclusive. A policy of fire insurance was issued to plaintiff, “the amount insured being not more than three-fourths of the value of the property as stated by the applicant.” *Held*, that this valuation was conclusive, in the absence of fraud, although a subsequent proviso restricted the whole amount of insurance, if an additional policy was obtained, to three-fourths of the actual value of the property at the time of loss,” and, although there was a covenant in the application (but not in the policy), that such valuation should not be conclusive. 1870. *Luce v. Dorchester Mutual Fire Insurance Co.* (105 Mass. 297), VII, 522.

61. — proof of. A policy of fire insurance was issued to plaintiff for a sum “being not more than three-fourths of the value of the property described in the application.” A subsequent proviso restricted the liability of the company to “three-fourths of the actual cash value of the property insured at the time of the loss.” *Held*, that the valuation, which was contained in the application, was not controlling, and that proof of the actual value at the time of the loss was admissible. 1870. *Brown v. Quincy Mutual Fire Insurance Company* (105 Mass. 396), VII, 538.

62. Statement as to use. The application for a fire policy contained the question, “for what purpose the building was used,” and the answer was “tobacco

pressing; no manufacturing." But the evidence showed that in a shed attached to the main building tobacco hogsheads were manufactured. *Held*, that the question, "whether the preparation of hogsheads was such an incident of the business as to be included in it," was for the jury." 1870. *Sims v. State Ins. Co.* (47 Mo. 54), IV, 311.

63. — A policy of fire insurance was issued "on a four-story warehouse * * * first floor occupied by machinery used for making barrels, with privilege of storing barrels on the premises, and other merchandise not more hazardous." The policy contained a clause requiring a true and accurate description of the use and occupation of the premises under penalty of forfeiture. The policy further declared, in printed words, that it was the intention of the parties that in case the insured premises should be used or appropriated for the purpose of carrying on or exercising the trade, business or vocation of (a large number of manufactures specified therein, including) "cooper, carpenter, cabinetmaker," * * * "so long as the said premises shall be wholly or in part appropriated or used for any or either of the purposes aforesaid, these premises shall cease and be of no force or effect unless otherwise specially agreed by this corporation, and such agreement shall be signed in writing in or on the policy." The premises, at the time the insurance was effected, were used for making and storing barrels as mentioned in the written portion of the policy. Subsequently small circular saws and a work-bench were introduced and boxes were manufactured, but this kind of work had ceased from two to four months when a loss by fire occurred. The saws and work-bench had remained in the building and a lathe had been put up the day preceding the fire, for the purpose of making broom-handles and brush-blocks. In an action on the policy, *held*, (1) that the description of property was not a *continuing* warranty, but a warranty *in presenti*; (2) that the policy was suspended during the prohibited use of the premises, but was revived when the use ceased to exist; and (3) that there was no such "appropriation" of the premises, at the time of the fire, to a prohibited use as was contemplated in the policy or as prevented a recovery. 1870. *United States Fire and Marine Insurance Co. v. Kimberly* (84 Md. 224), VI, 325.

64. — A policy of insurance against fire was issued on a building, upon the application of an insurance broker, who, without the owner's knowledge or authority, stated in the application that the building was used as a machine shop. It was, in fact, used as an organ factory, the risk on which was more hazardous than on a machine shop. The owner accepted the policy, expressed to be on a machine shop, and paid the premium. In an action on the policy after loss, *held*, that the policy was void, as the minds of the parties never met on the subject-matter of the contract. 1871. *Goddard v. Monitor Mutual Fire Ins. Co.* (108 Mass. 56), XI, 307.

65. **Location of insured property — change of.** Defendant issued to plaintiff a policy of fire insurance on goods "contained in the first story of the five-story brick building situated at No. 89 Center street." Subsequently plaintiff moved his goods up stairs, and the agent of defendant received the renewed premium with knowledge of the change in location of the goods, giving a receipt in the

words "On stock * * * 89 Center street," etc. A loss by fire having occurred while the goods were located up stairs, *held*, that plaintiff could recover. 1872. *Ludwig v. The Jersey City Insurance Co.* (48 N. Y. 379), VIII, 556.

66. Incendiarism — fears of. In an application for a policy of insurance, the applicant stated that he did not fear and had no reason to fear an incendiary fire, which was untrue. *Held*, that it was error to submit to the jury the question whether an attempt to fire the building was material to the risk, it being material as a matter of law. 1871. *North American Ins. Co. v. Throop* (22 Mich. 146), VII, 688.

67. Concealment of execution sale. A policy of fire insurance provided that "if the interest of the insured to the property be any other than the entire, unconditional and sole ownership of the property," it must be so represented to the company and expressed in the policy. Plaintiff effected an insurance on property which had at the time been sold on a judgment and execution against him, but the twelve months allowed to redeem had not elapsed. *Held*, that the non-disclosure of the execution sale avoided the policy. 1871. *Reaper City Ins. Co. v. Brennan* (58 Ill. 158), XI, 54.

6. Conditions and provisions in policy.

68. As to payment of premium. A policy, the premium for which had been paid by note, contained a provision that in case the note should not be paid at maturity, the full amount of the premium should be considered as earned, and the policy become void while said past-due note remained over-due and unpaid; a loss occurred after the maturity of the note and before it was paid. *Held*, that the company was not liable for any loss which occurred during the continuance of the default, but that, on the subsequent payment of the note, the policy revived and was in force from the date of such payment. 1870. *Williams v. Albany City Insurance Co.* (19 Mich. 451), II, 95.

69. — The Potomac Fire Insurance Company issued its policy of insurance to B., stipulating therein that the company would pay all loss to the property insured resulting from fire, and not exceeding the amount specified, during one year from the date of the policy. There were further provisions in the policy, expressly providing that the company should not be held liable under the policy until the premium in full was actually paid, and that, if the premium was not paid within fifteen days from the date of the policy, it should be null and void. A loss by fire occurred to the property covered by the insurance after the delivery of the policy, but before the premium was paid and before the expiration of the "fifteen days." The insured, while the fifteen days were still unexpired, tendered the amount of the premium and claimed indemnity for the loss. *Held*, that actual payment of the premium, not only within the "fifteen days" but before loss, was necessary to render the company liable under the policy, and that the holder, not having fulfilled the conditions, could not recover for the loss. 1869. *Bradley v. Potomac Fire Insurance Co.* (82 Md. 106), III, 121.

70. Waiver. A policy provided that when a premium note was taken for a cash premium, any default in its payment should operate to suspend the com-

pany's liability until it should be paid. The assured gave such a note, and, immediately after it was due, having another policy which he desired canceled and the unearned premium thereon applied to this note, and not knowing how much would be due the company, he proposed, by letter, to pay, asking for a statement of the amount, whereupon the company at once applied upon the note the amount in their hands and directed him, by letter, to remit the balance, which he did by first mail; but a loss occurred before the remittance was mailed. *Held*, that the forfeiture was waived. 1870. *Sims v. State Insurance Co.* (47 Mo. 54), IV, 811.

71. Payment. Notwithstanding a condition in a policy of insurance that re-insurance, whether original or continued, shall not be considered as binding until the actual payment of the premium, it is competent for the insurer to disregard such condition, and upon a renewal of the policy to waive by parol the payment in cash of the premium. And such waiver may be shown by direct proof that credit was given, or could be inferred from circumstances. The waiver may be by the insurance company, or by one of its authorized agents. 1872. *Bodine v. Exchange Fire Insurance Co.* (51 N. Y. 117), X, 566.

72. Hazardous articles. An insurance policy, containing clauses which forbid the keeping by the insured upon his premises of "hazardous" articles, but which has indorsed upon it by the company permission "to keep one barrel of benzine or turpentine in tin cans," is not violated by the introduction of a barrel of benzine in a wooden barrel upon the premises, for the purpose of immediately emptying the same into a tin can. 1869. *Maryland Fire Insurance Co. v. Whiteford* (31 Md. 219), I, 45.

73. — A steamboat was insured against fire by a policy conditioned to be void "if gunpowder, camphene, spirit-gas, naphtha, benzine or benzole, chemical, crude, or refined coal oils are kept or used on the premises without consent." *Held*, that the use of kerosene oil to light the boat did not forfeit the policy. 1872. *Morse v. Buffalo Fire and Marine Insurance Co.* (30 Wis. 534), XI, 587.

74. Additional insurance. It seems that a clause in a policy of fire insurance prohibiting a second insurance without the consent of the company is valid. 1870. *Illinois Fire Insurance Co. v. Fix* (53 Ill. 151), V, 38.

75. — A policy of insurance against fire issued September, 1866, and renewed September, 1867, contained the following clause: "If, without written consent herein, there is any prior or subsequent insurance, this policy shall be void." The policy did not declare by whom the consent must be signed. Both policy and renewal contained clauses declaring them invalid, unless countersigned by the general agent of the company. In December, 1867, the same property was again insured in another company. The first company had no notice of this second insurance and gave no consent thereto until December, 1867, when another agent of the company indorsed on the first policy, "other insurance to the amount of \$4,000 is hereby permitted." This indorsement was unsigned. In an action on the policy it was *held*:

1. That the unsigned consent was invalid in the absence of the signature of the general agent, without proof that it was given by some one authorized to

bind the company in that way, or unless the company had in some way ratified the act.

2. That upon the taking out the second policy the first policy became void, and was not revived by the written consent, unless the same was given by some one having authority to waive a forfeiture, with full knowledge of the previous insurance, and with a design to include it in the permission.

3. That no act of the company or its agents could operate as a waiver of written consent, and render valid a void policy, unless performed with full knowledge of all the facts. 1871. *Security Insurance Co. v. Fay* (22 Mich. 467), VII, 670.

76. — The charter of the defendant, a fire insurance company, provided that every policy issued by the company covering property otherwise insured should be void, "unless such double insurance should exist by consent of said company, indorsed upon the policy under the hand of the secretary." *Held*, that the company could not waive this provision, nor consent to double insurance except by the indorsement specified. 1871. *Couch v. The City Fire Insurance Company of Hartford* (38 Conn. 181), IX, 375.

77. — A applied to defendant's agent for insurance on his property on the 18th of the month, and it was agreed that the agent should issue and send to A the policy on that day. The policy was, in fact, issued on, and bore the date of that day, but was not delivered to A, nor the premium paid until the 23d of the month. The policy contained a condition that it should be void in case of prior or subsequent insurance. On the 21st of the same month A applied to the agent of the P. company for insurance on the same property, and the terms were agreed on and the premium paid. The agent of the P. company, having no blanks for policies, agreed to send a policy to A, and gave him a receipt specifying the property to be insured. The usual policies of the P. company contained a condition of avoidance in case of other insurance. Neither company was informed of the transaction with the other. On the 26th of the month the insured property was burned. As soon as the P. company was informed of the policy issued by defendant, it treated its contract with A as void. In an action on the policy issued by defendant, *held*, (1) that the policy became operative and binding from the day it was issued, though not delivered, and was, therefore, prior to the P. company's contract; (2) that the effect of the receipt given by the agent of the P. company was to bind the company the same as if a policy, with the ordinary conditions, had been issued; (3) that the contract with the P. company being void by reason of the prior insurance, and being so treated by the company, did not amount to a breach of the condition in defendant's policy against subsequent insurance. 1871. *Hubbard v. The Hartford Fire Insurance Co.* (33 Iowa, 825), XI, 125.

78. Over-insurance — "estimated cash value." A policy of fire insurance upon buildings contained a stipulation, "that the aggregate amount insured in this and other companies * * * shall not exceed two-thirds of the estimated cash value." The insurance was for \$1,300, and the estimated cash value, according to the policy, was \$1,950; subsequently improvements were made and an additional insurance of \$1,000 was effected in another company.

The buildings were destroyed by fire; and their value at the time of the fire was \$4,200. In an action on the first policy, *held*, that the "estimated cash value" was that at the time of the first insurance; and that the first policy was void for over-insurance. 1870. *Elliott v. Lycoming County Mut. Ins. Co.* (66 Penn. 22), V, 828.

79. — **waiver.** Where an insurance company, after notice or knowledge of over-insurance, makes and collects assessments under the policy upon the assured, a forfeiture for over-insurance is thereby waived; but where an assessment is made by the agent of the company, by mistake, but is not collected and is never paid, this does not constitute a waiver of the forfeiture. *Ib.*

80. — Where a policy of fire insurance is issued upon a house and stable, and an over-insurance is made upon the house, a tender of the amount insured on the stable, in case of loss by fire, is not an affirmation of the insurance as to the house so as to preclude the company from setting up a forfeiture. *Ib.*

81. **Explosions.** A fire policy excepted from the risk "any loss or damages occasioned by or resulting from any explosion whatever." The fire, by which the insured property was consumed, was occasioned by an explosion of vapor arising from the process of rectifying whisky. *Held*, that the insurers were not liable. 1872. *United Life, Fire, etc., Ins. Co. v. Foote* (22 Ohio St. 840), X, 735.

82. **Builder's risk.** A policy of insurance against fire on an ice-house contained a condition entitled "Builder's risk," that "the working of carpenters, roofers, etc., in building, altering or repairing the premises named in the policy, without permission indorsed in writing on the policy, should vitiate it." The assured, in an action on the policy, testified that the "ice-house was nearly as good as new, for the reason that he always kept a crew of men and a carpenter or two about the building the year round, and was constantly making repairs and keeping the building in thorough condition." *Held*, that the facts did not vitiate the policy. 1872. *Franklin Fire Ins. Co. v. Chicago Ice Co* (36 Md. 102), XI, 469.

83. **Increasing risk.** The provision in a policy of insurance against an increase of risk by acts of the insured is an independent condition of itself and is not to be controlled or limited by the previous provisions or specifications of the hazards. Therefore, an act done by the assured, although not included in the class of specified hazards, nevertheless avoids the policy if it increases the risk. 1871. *Dittmer & Pelle v. Germania Insurance Company of New Orleans* (23 La. An. 458), VIII, 600.

84. — In this case the assured allowed a lot of loose and unlabeled hay to be stored in the upper part of the building insured, without giving notice to the insurers. *Held*, that, although unlabeled hay was not specially excepted from the hazards, yet, from its very nature, the risk was increased, and, therefore, it avoided the policy on that ground. *Ib.*

85. **Increase of risk — leaving dwelling-house unoccupied — evidence.** A policy of fire insurance on a dwelling-house provided that any increase of the risk, by the act or with the knowledge or consent of the assured, avoided the policy. The assured allowed the dwelling-house to remain unoccupied for

some time, when a loss by fire occurred. *Held*, that the opinions of experts as to whether leaving a dwelling-house unoccupied for a considerable length of time, was an increase of risk was inadmissible; also, that the testimony of the company's agent that it was their custom to charge extra premiums upon such unoccupied dwelling-houses was inadmissible, although the testimony of witnesses having the requisite knowledge and experience, that it was the custom of insurance companies generally to charge extra premiums upon unoccupied dwelling-houses, was admissible. 1870. *Luce v. Dorchester Mut. Ins. Co.* (105 Mass. 297), VII, 522.

86. Alienation — a mortgage upon property insured is not a violation of a clause in the policy against the sale, conveyance, alienation, transfer or change of title of the property. 1869. *Commercial Ins. Co. v. Spankneble* (52 Ill. 53), IV, 582.

87. — A mortgage does not come within the provisions of a policy of fire insurance, prohibiting, without consent, any change "in the title or possession of the property, whether by sale, voluntary transfer or conveyance." 1870. *Hartford Fire Ins. Co. v. Walsh* (54 Ill. 164), V, 115.

88. — sale and mortgaged back. A policy of insurance contained a provision that if the property insured should be sold or transferred, or any change should take place in title or possession, without the consent of the insurers, the policy should be void. *Held*, that a sale or conveyance of the property, without consent, avoided the policy, although simultaneously therewith a mortgage was executed back by the purchaser for a part of the purchase-money. 1878. *Savage v. Howard Ins. Co.* (52 N. Y. 502), XI, 741.

89. — foreclosure of mortgage. A policy of fire insurance on personal property contained a proviso that "if the title of the property is transferred or changed," "this policy shall be void; and the entry of a foreclosure of a mortgage," "shall be deemed an alienation of the property, and this company shall not be holden for loss or damage thereafter." The insured property was mortgaged at the time the insurance was effected, and notice of foreclosure had been duly served, certified and recorded when the fire occurred. *Held*, that the policy was avoided. 1869. *McIntire v. Norwich Ins. Co.* (102 Mass. 280), III, 458.

90. — An executory contract for the sale of the insured premises is not a violation of a condition against alienation. 1870. *Washington Fire Ins. Co. v. Kelly* (83 Md. 431), III, 149.

91. Renewal after transfer — waiver. A policy of fire insurance contained a clause, to the effect that if any transfer of the title or possession of the property was made without consent of the company, the policy should be void. The title of the property was transferred to plaintiff March 4; a renewal was effected March 21, by the insured; on the 15th of April, the policy was assigned to plaintiff, who, on the same day, informed the company's agent that the property and policy had been transferred to him, and received the company's written consent, signed by the agent. *Held*, that the renewal after the transfer did not avoid the policy, and that the consent of defendants to the transfer waived the forfeiture and revived the policy. 1871. *Shearman v. The Niagara Fire Insurance Co.* (48 N. Y. 526), VII, 880.

92. — Defendants, through an agent authorized to issue and renew policies and to receive premiums therefor, insured R. by a policy containing a condition of forfeiture in case of any transfer, or change of title or possession, of the insured property. R.'s title to the property vested in plaintiff, who notified the agent of the fact, and paid to him the premium and took a renewal receipt. Loss having occurred, *Held*, that the condition was waived and that plaintiff could recover. 1871. *Miner v. The Phoenix Insurance Company* (27 Wis. 683), IX, 479.

93. Transfer by one partner to another. A policy of fire insurance on partnership goods contained a provision that if the goods should be "sold or conveyed, or the interest of the parties therein changed," it should be void. *Held*, that a transfer by one partner of his interest in the goods to his copartners was not a sale, conveyance or change of interest within the meaning of the policy. 1871. *Burnett v. Eufaula Home Insurance Co.* (46 Ala. 11), VII, 581. 1870. *Pierce v. Nashua Ins. Co.* (50 N. H. 297), IX, 235.

94. Change of possession — temporary absence. Under a clause, in a policy of fire insurance upon a dwelling-house, prohibiting change of possession, it is not contemplated that the insured shall remain constantly on the premises; temporary absence, leaving the house in charge of an agent or servant, does not violate the prohibition. *Ib.* 1871. *Shearman v. Niagara Fire Ins. Co.* (46 N. Y. 526), VII, 380.

95. Assignment of policy — right of assignee. Where a policy of fire insurance is assigned as collateral to a mortgage, with the consent of the company, the assignee takes it subject to the conditions thereof, and no recovery can be had merely in consequence of the equities of the assignee, if the assignor has lost the right to recover by violating the terms of the contract. 1870. *Illinois Mut. Fire Ins. Co. v. Fix* (53 Ill. 151), V, 38.

96. — effect of. Where a policy was void in the hands of the assured by reason of misrepresentations, it will be equally void in the hands of an assignee, although the company assent to the assignment. 1871. *Citizens' Fire Ins. Co. v. Doll* (35 Md. 89), VI, 380.

97. — evidence. In an action by the assignor of a policy of fire insurance for the use of an assignee, evidence to show that plaintiff set the building on fire is admissible. 1870. *Illinois Mutual Fire Ins. Co. v. Fix* (53 Ill. 151), V, 38.

98. — redeeming by assured after assignment. A policy of fire insurance contained the following condition: "Policies of insurance, subscribed by this company, shall not be assignable without the consent of the company expressed thereon. In case of assignment without such consent, whether of the whole policy or of any interest in it, the liability of the company in virtue of said policy shall thenceforth cease." The policy was assigned, without consent of the company, as collateral security for a debt. A loss by fire occurred, and the insured redeemed the policy. *Held*, that he could not recover thereon. THOMPSON, Ch. J., dissented. 1871. *Ferree v. Oxford Fire and Life Ins. Co.* (67 Penn. St. 873), V, 436.

99. — refusal of company to ratify. A policy of fire insurance was issued on buildings by a company whose charter declared that, whenever any build-

ings insured should be alienated, the policy should thereupon be void, "*provided, however*, that the grantee or alienee having the policy assigned may have the same ratified and confirmed * * * upon application to the directors, and with their consent, within thirty days next after such alienation." The buildings covered by this policy were conveyed, and the policy was assigned by the assured. A loss by fire occurred on the eighth day after the alienation, whereupon the company were immediately informed of the loss, and an application was made by the assignee for a ratification. The company refused, arbitrarily and without cause; and, on a bill brought in chancery praying for relief,—*Held*, that the assignee was entitled to recover of the company for the loss, the same as if they had ratified the assignment. 1870. *Boynston v. Farmers' Mut. Fire Ins. Co.* (43 Vt. 256), V, 278.

100. **Cancelling policy.** Plaintiff was insured by defendant, but afterward, upon the representations of defendant's agent that the policy had been canceled and one in another company substituted, assented to the substitution, and gave a receipt for the unearned premium. He never received the latter, however, nor was another policy substituted. A loss having occurred, in an action on the policy,—*Held*, that the defendants were liable. 1871. *Holden v. Putnam Fire Ins. Co.* (46 N. Y. 1), VII, 287.

101. — Defendants, in their policy, reserved the right to cancel them, "on giving notice to that effect, and refunding a ratable proportion of the premium for the unexpired term." Before a loss occurred the policy was returned for cancellation to the company's agent, who notified plaintiff's agent that he was ready to pay the unearned premium, but he did not in fact pay it until a month subsequent; in the meantime the loss occurred. *Held*, that these facts did not relieve the company of their liability, and that plaintiff could recover. 1872. *Hollingsworth v. Germania Ins. Co.* (45 Ga. 294), XII, 579.

102. **Limitation of action.** A policy of fire insurance provided that no suit or action should be sustainable unless commenced within twelve months after a loss shall have occurred. *Held*, that if the assured was induced by the acts of the officers or agents of the insurance company to suspend for a certain time the performance of acts required on his part after loss, such time should be added to the time limited for bringing action. 1871. *Killips v. Putnam Ins. Co.* (28 Wis. 472), IX, 506.

103. **Repairs by company — proof of loss.** A policy of fire insurance provided that in case of loss, the company might restore or repair the property, within a reasonable time, by giving notice of its intention so to do, within thirty days after the receipt of proof of loss. *Held*, that to authorize the company to repair, notice of their intention so to do must be served within the thirty days specified, and that, in the absence of any provision in the policy to the contrary, delivery of proof of loss to the local agent was delivery to the company for all the purposes of the policy. 1871. *The Insurance Company of North America v. Hope* (58 Ill. 75), XI, 48, and *note*, 51.

7. *Notice and proof of loss.*

104. **Objection to, waiver.** A policy of insurance against fire contained this clause: "Nothing but a distinct specific agreement, clearly expressed and indorsed on the policy, shall operate as a waiver of any printed or written condition therein." *Held*, not to refer to stipulations in the policy as to notice and proofs of loss, and that the failure on the part of the insurer to promptly object to the form and sufficiency of such notice and proofs of loss amounted to a waiver of such stipulation. 1872. *Franklin Fire Ins. Co. v. Chicago Ice Co.* (36 Md. 102), XI, 469.

105. **Notice of loss.** It is a sufficient compliance with a condition in a policy of fire insurance requiring that, in case of loss, "the insured shall forthwith give notice thereof to the secretary," where a sworn statement of the fact and circumstances of the fire, signed by the assured the morning after the fire, was forwarded, on the following day, by the agent, to the secretary of the company. 1870. *Beatty v. Lycoming County Mutual Insurance Co.* (66 Penn. 9), V, 818.

106. — A policy of fire insurance provided that "in case of loss, the assured shall give immediate notice thereof, and shall render to the company a particular account of said loss," etc. *Held*, that immediate notice of loss only was required. 1871. *Killips v. The Putnam Fire Insurance Company* (28 Wis. 472), IX, 506.

107. **Statement of loss.** A policy of fire insurance required that the statement of loss, if any, should be signed and sworn to by the assured; but, a loss having occurred, the statement was presented "signed and sworn to" by the agent of the assured, who had the entire control and management of the insured property and who obtained the policy. *Held*, that the statement was sufficient. 1870. *Sims v. State Ins. Co. of Hannibal* (47 Mo. 54), IV, 811.

108. — It is not a sufficient compliance with a condition in a policy of fire insurance, on "household furniture \$367" and "groceries \$233," requiring that, in case of loss, "the insured shall * * * within thirty days deliver to the secretary a particular account" of the loss, where the statement sent by the insured is a mere reiteration of the description in the policy: "household furniture \$367," and "groceries \$233," and the fact that the company received such a statement at the end of twenty days, but gave no notice of insufficiency, is not a waiver of the condition demanding a "particular" statement. 1870. *Beatty v. Lycoming Insurance Co.* (66 Penn. 9), V, 818.

109. **Proof of loss — waiver.** The secretary of a fire insurance company sent the following letter to an assured, in response to a statement and preliminary proof of loss: "The proofs of loss furnished by you to this company are wholly unsatisfactory as to the amount of the claim, even if the company be responsible at all. The company, however, denies any responsibility by reason of material representations as to the title and property being untrue and for other reasons. With a reservation of all objections to your recovering in any form, and without waiving any of the rights of the company under the policy, we leave you to pursue such a course as you may deem expedient." In an

action on the policy, *held*, that the letter did not constitute a waiver of the defects in the preliminary proof of loss. 1871. *Citizens' Fire Insurance Security and Loan Co. v. Doll* (85 Md. 89), VI, 860.

110. **Proof of loss—evidence.** In an action on a policy of insurance, the statement and *ex parte* affidavit of the plaintiff as to loss and value of the property furnished to the defendant as "preliminary proof" of loss should not be read to the jury as evidence in the cause. *Id.*

8. *Payment of loss—Who entitled to its benefits.*

111. **Subrogation.** Where the assured has an executory contract for sale of the mortgaged premises at the time of the loss, *held*, that the insurance company, on payment of the loss, could not be subrogated to the rights of the insured, *pro tanto*, under the contract of sale. 1870. *Washington Fire Insurance Co. v. Kelly* (83 Md. 421), III, 149.

112. **Mortgagor and mortgagee—subrogation.** One of the defendants procured insurance with the plaintiffs upon certain buildings owned by him. By the terms of the policies the loss was payable to the owner of a mortgage on the insured premises. The owner of the mortgage was protected against forfeiture of insurance by reason of the acts of the owner of the property, and the insurers were, in case of payment of insurance to mortgagee, to be subrogated to his rights. The policies also provided that, in case of any change of title in the property insured, they should be void. Subsequently to effecting insurance, the defendant sold and conveyed the premises insured, soon after which they were destroyed by fire. *Held*, that the owners of the premises could not have recovered upon the policies, and that they were not entitled to have the payment of the amount insured by the insurers to the owner of the mortgage applied in satisfaction of the mortgage. 1870. *Springfield Fire Insurance Co. v. Allen* (43 N. Y. 389), III, 711.

113. **Vendor and vendee—right of assignee of vendor.** The assignee of the interest of a vendor in a contract of sale of real estate, by which the vendee agrees to keep the premises insured for the benefit of the vendor, is equitably entitled to the proceeds of a policy, after loss, to the extent of his assignor's interest, and the insurance company, with notice of such assignee's claim, is liable for his share of the proceeds even if the whole amount has been paid over, after such notice, to the insured. 1870. *Cromwell v. The Brooklyn Fire Insurance Co.* (44 N. Y. 42), IV, 641.

114. **Judgment creditor not entitled to insurance money.** A., having obtained a judgment against B., levied execution upon premises owned and insured by B. Subsequently the premises were destroyed by fire. *Held*, that A. was not entitled to the proceeds of the insurance policy. 1871. *Plimpton v. Farmers' Mutual Insurance Co.* (43 Vt. 497), V, 297.

115. **Apportionment of loss.** The defendant insured a specific parcel of property, by a policy permitting other insurance, and providing for an apportionment of the loss, in case of other insurance. The same, together with other property, was subsequently covered by other policies for an entire sum less

than the aggregate value of the property insured by all the policies. There was a total loss of the whole property covered by all the policies. *Held*, that the sum insured by the latter policies was to be distributed among the several parcels in the proportion which that sum bore to the total value of all the parcels; and that the amount of insurance on the specific property being less than its value, there was no over-insurance, and, consequently, no occasion for any apportionment. 1872. *Ogden v. East River Insurance Co.* (50 N. Y. 388), X, 492.

116. — For the purpose of apportioning the loss in case of over-insurance where several parcels are insured together, by one policy, for an entire sum, and one of the parcels is insured separately by another policy, the sum insured by the first-mentioned policy is, in case of a destruction of the entire property, to be distributed among the several parcels, in the proportion which the sum insured by that policy bears to the total value of all the parcels. *Ib.*

9. *Mutual company.*

117. *Lien of policy.* A member of a mutual insurance company held a policy on buildings and property containing a provision that the buildings insured and the land on which they stood became pledged, by the insurance, to the company, and that the company should have a lien thereon for the premium. The insured died in debt for the premium, having devised the property insured, with the land, to his widow, who conveyed it to Mathers, the latter not having notice of the lien of the insurance company. *Held*, that the lien of the policy could not be enforced after the property had passed into the hands of a *bona fide* purchaser. 1869. *Kentucky Farmers' Mutual Insurance Co. v. Mathers* (7 Bush. Ky. 23), III, 286.

118. A policyholder in a mutual insurance company is presumed to know such rules as are contained in the charter and by-laws, but not the business regulations and instructions to agents adopted by the officers of the company. 1870. *Walsh v. Etna Life Insurance Co.* (30 Iowa, 183), VI, 664.

119. *Assessments on premium notes — proof or loss.* In an action by a mutual fire insurance company for the amount of an assessment upon a premium note, *held*, that proof of a resolution of the company's board of directors, levying the assessment to meet the indebtedness of the company, was insufficient to establish the liability on the note, without further proof that the losses and expenses which authorized the assessment had actually occurred. 1872. *Pacific Mutual Insurance Co. v. Guse* (49 Mo. 329), VIII, 182, and *note*, 185.

IV. LIFE INSURANCE.

1. *Contract, when complete.*

120. *Policy when attaches — death before delivery.* An application was made to the agent of defendant for a policy of insurance on the life of plaintiff's husband, the applicant paying \$50, according to the rules of defendant, to be applied on the first year's premium, if the insurance should be effected. The application was forwarded to defendant's office, and a policy was made out and sent to the agent for delivery; but the insured having died two days

after the policy was issued but before its delivery, the agent refused to deliver it, although the balance of the premium was offered to be paid. *Held*, that the policy had attached. 1871. *Cooper v. Pacific Mutual Insurance Company of California* (7 Nev. 116), VIII, 705.

121. Delivery of policy. H. made application to a life insurance company, through its authorized agent, for an insurance upon his life for the benefit of his wife, the plaintiff, and soon after left the State upon a temporary absence. During his absence the company prepared for him a policy of insurance and sent it to the agent with instructions to deliver the same to H. on receipt of the first premium. The agent of the company took the policy to H.'s place of business where he found his son, who had been left in charge of the business of H., to whom he exhibited the policy, informing him that the first premium of \$100 was to be paid in cash, and a note for about the same amount given to the company. His son said he could not make the cash payment, but gave his father's note, as required by the agent, who took the same and retained it, together with the policy, saying he would keep the policy good until his father came home. About two weeks after H. died, never having returned. *Held*, that there was no actual or constructive delivery of the policy; that the acts of the company in executing a policy of insurance and forwarding the same to its agent to be delivered to the insured on receipt of the premium were not evidence of a contract to insure; that, while these acts were indicative of an acceptance of the application of H., they were evidence of an acceptance only as the basis of a contract to be entered into by a policy to be made and delivered upon payment of the premium by the other party. 1871. *Heiman v. Phoenix Mutual Life Insurance Co.* (17 Minn. 153), X, 154.

122. Countersigning policy. The wife of N. took out a policy on his life in a life insurance company for which he was agent. The receipts for the premiums on policies of this company were in the form of renewal certificates, and contained a condition that the receipt should not be valid and binding on the company until the premium was paid and the receipt countersigned by the agent. After the death of N., receipts for the several premiums were found among his papers, but they were not countersigned by him. *Held*, that the receipts were *prima facie* evidence, in an action on the policy, of the payment of the premiums. 1870. *Norton v. Phoenix Mutual Life Ins. Co.* (38 Conn. 508), IV, 98.

123. — A policy of life insurance, which provides that it shall not be in force until countersigned by the agent, is invalid until so countersigned, even though the agent is himself the party assured. 1869. *Badger v. American Popular Life Ins. Co.* (103 Mass. 244), IV, 547.

124. Payment of premium — forfeiture. A life insurance policy was issued to plaintiff's decedent in April, 1866, expressed to be made in consideration of a premium, already paid, and of a like sum to be annually paid during the continuance of the policy, and providing that the policy should "not take effect until the premium was paid," and that the policy should be forfeited "in case any premium due upon the policy should not be paid at the date when payable." The first premium was paid partly in cash and partly in promissory

notes, but the notes were not paid, and the insured died March, 1867. *Held*, that the policy had taken effect, and that the non-payment of the notes did not bar plaintiff's recovery, because the "forfeiture" clause referred to premiums after the first. 1869. *McAllister v. New England Mut. Ins. Co.* (101 Mass. 558), III, 404.

125. Tender of premium after death — usage. A policy of insurance was issued on the life of H., containing a provision that no insurance should be binding until the actual payment of the annual premium. H. paid the premium for several years; but on a day when the annual premium was due, and while on his way to pay the premium, he was struck with paralysis and died. Within a few days the premium was tendered by the wife of H., but refused. In an action on the policy, it was admitted that there was a usage and agreement between the company and the insured to receive the premium within a reasonable time after due. *Held*, that the company was liable on the policy. HUNT and LEONARD, CC., dissented. 1870. *Howell v. The Knickerbocker Life Ins. Co.* (44 N. Y. 276), IV, 675.

2. Agents.

126. When company bound by acts of. Where the agent of a life insurance company is authorized to receive applications from policy-holders for permits to reside in restricted territory, and to receive money therefor, but is not authorized to *grant* such permits, and, by his acts and representations, a policy-holder is induced to believe that, on the payment of the money for a permit, it was granted, the company is estopped from denying the force of such a permit. 1870. *Walsh v. Aetna Life Ins. Co.* (30 Iowa, 183), VI, 664.

127. Notice to. Where an insurance company transacts business through an agent having authority to solicit, make out and forward applications for insurance, to deliver over policies, when returned, and to collect and transmit premiums, notice given to such agent, when engaged in procuring an application, will operate as notice to the company, and the company will be bound by acts then done by the agent, in respect to the business which he is transacting. 1871. *Miller v. The Mutual Benefit Life Insurance Co.* (31 Iowa, 216), VII, 122, and *note*, 128. See *supra*, pl. 1.

128. An untrue or fraudulent statement of a fact material to the risk in the application for the policy will not defeat a recovery against the company, if such company or its agent was informed of, and knew the truth in regard to such fact, and afterward received the application, the premium money and notes, and issued the policy. *Ib.*

129. Waiver — receipt of premium. The receipt of the premium on a policy of life insurance by an authorized agent of the company is a waiver, binding on the company, of a forfeiture for violation of a condition against residing in a restricted district where such violation is known to the agent at the time of the receipt of the premium. 1870. *Walsh v. Aetna Life Insurance Co.* (30 Iowa, 183), VI, 664.

3. Representations and concealments.

130. Materiality of. A policy of life insurance provided that "if any of the declarations or statements made in the application for this policy, upon the

faith of which this policy is issued, shall be found in any respect untrue," the policy shall be void, and purported to be made by the insurers in consideration of the representations made to them in the application for this policy. *Held*, that the answers to the questions in the application were representations and not warranties, and that their untruth was matter of defense to be pleaded and proved by the insurer; *held*, also, that such representations are made conclusively material by the terms of the policy. 1871. *Price v. Phoenix Mutual Life Ins. Co.* (17 Minn. 497), X, 166.

131. **Where erroneous answer does not affect risk.** A policy of life insurance was issued "upon the faith of the statements in the application," with a stipulation that if they "shall be found in any respect untrue," the policy should be void. *Held*, that although, under the policy, the answers to the questions contained in the application must be construed as warranties that they were true in every particular, yet a negative answer to the question, "Has the party ever met with an accidental or serious personal injury?" did not bar a recovery, when the insured had actually met with an "accidental" injury, such injury, however, being slight, and not affecting the subsequent health or the longevity of the insured. 1870. *Wilkinson v. Connecticut Mutual Life Insurance Co.* (30 Iowa, 119), VI, 657; affirmed, 18 Wall. 232.

132. **As to marriage—misrepresentations.** Where one, representing himself to an insurance company to be a married man, effects an insurance on his own life for the benefit of his alleged wife and as her agent, when in fact the marriage is void by reason of the reputed wife having a former lawful husband living at the time, and the policy contains a provision that any false statement by the assured shall invalidate it; *held*, that the policy is not void by reason of the illegality of the last marriage, unless it appears that the said reputed husband and wife knew at the time the insurance was effected that at the time of their supposed marriage the lawful husband was living, and the marriage illegal, and failed to inform the company of the fact. 1870. *Equitable Life Ins. Co. v. Patterson* (41 Ga. 888), V, 585.

133. **Concealments.** Plaintiff's decedent, a canvasser for a life insurance company, under instructions from the president to be cautious and not insure insane persons, subsequently made application for a policy on his own life, stating that there were no circumstances which rendered him peculiarly liable to accident, but omitting to state that he had been previously afflicted with insanity, from which he had apparently been cured. *Held*, that if he did not conceal any fact which, in his own mind, was material in making the application, the policy was not void. 1871. *Mallory v. Travelers' Ins. Co.* (47 N.Y. 52), VII, 410, and *note*, 414.

134. **The term "family physician of the party,"** as used in the policy, *held* to mean the physician who usually attends and is consulted by the members of a family in the capacity of physician, whether or not he usually attended on, or was consulted by, the insured himself. 1871. *Price v. Phoenix Mutual Life Ins. Co.* (17 Minn. 497), X, 166, and *note*, 188.

4. Conditions.

135. **Suicide.** Where a proviso in a life insurance policy is, that it shall be void if the assured "shall die by suicide," and the assured took a rope and hung himself, there can be no recovery on the policy, although the act of self destruction was committed under the influence of insanity, in the absence of evidence proving delirium or madness, or that the act was involuntary. 1869. *Cooper v. Massachusetts Life Ins. Co.* (103 Mass. 227), III, 451, and *note*, 454.

136. — Where, from the facts in an action on a life insurance policy, it appears that the death of the assured was caused either by an accidental injury or the suicidal act of the deceased, the presumption is against suicide. 1871. *Mullory v. Travelers' Insurance Company* (47 N. Y. 52), VII, 410, and *note*, 414.

137. — Death from an over-dose of laudanum, taken by mistake, while in a drunken condition, is not dying "by his own hand;" but death from laudanum taken with intent to destroy life, though while in a drunken condition, would be dying "by his own hand." 1870. *Equitable Life Ins. Co. v. Paterson* (41 Ga. 388), V, 535.

138. **Death in violation of law.** A policy of life insurance contained a proviso that "in case the insured shall die in the known violation of any law" the policy should be void. In an action on the policy it appeared that the insured had personal and financial difficulties with the family of C, and that while he was attempting to seize C's team, C jumped from his wagon and started as if to leave the team, but suddenly turned, drew a pistol, and shot the insured, killing him almost instantly. *Held*, that it was error not to submit the case to the jury to determine whether the death of the insured was caused by a known violation of the law on his part, and whether the death was a natural, reasonable or legitimate consequence of the act of the insured. 1871. *Bradley, Ex'r, v. The Mutual Benefit Life Insurance Co.* (45 N. Y. 422), VI, 115.

139. **Military service.** A policy of life insurance upon the life of W. contained a condition prohibiting the insured from going south of a specified degree of latitude, and from entering into any "military or naval service whatever." At the time of issuing the policy, the company, in consideration of a further premium, gave W. a written permission to go south of the specified degree of latitude for one year, provided that the "said W. was not insured by said policy against death from any of the casualties or consequences of war or rebellion, or from belligerent forces in any place where he may be." The insured, while engaged, within the year, in building a railroad bridge, under the direction of the United States military authorities, thirty miles in the rear of the Union army, was killed by a party of four men, not in uniform, who robbed the other laborers. *Held*, that the death of the insured did not occur while engaged in "military service," or from the "casualties of war or rebellion," within the meaning of the policy, and that the company was liable. 1871. *Welts v. Connecticut Mutual Life Insurance Co.* (48 N. Y. 84), VIII, 518.

War—effect of, on contract of insurance.

140. **As to agent—payment of premium in Confederate money.** M. a resident of Virginia, held a policy of life insurance issued by the defendant, a

foreign corporation, having a general agency and a sub-board of directors in New York, and paid his premiums regularly to an agent in Richmond, appointed by the New York agency. After the commencement of the war, arising from the rebellion of the southern States, the agent in Richmond received the premiums in Confederate money, but made no return to the general agents in New York. Prior to the death of M. the defendants took no steps to revoke the authority of the Richmond agent. *Held*, in an action on the policy, that the defendant being a foreign corporation, the war did not operate as a suspension of the authority of their agent in Richmond. *Held*, also, that the receipt by the agent of Confederate money, in payment of the premiums, constituted a valid payment, and was binding on the company. 1870. *Robinson v. International Life Assurance Society* (43 N. Y. 54), I, 490.

141. — At the commencement of the war of the rebellion, the defendant (a New York company) had a general agent residing in Mobile, whose authority to receive premiums was recognized by the defendant, after the issuing of the president's proclamation of August 16, 1861, forbidding commercial intercourse between the Confederate States and other States of the Union. The plaintiff holding, on the 2d of January, 1862, a policy issued by the defendant upon the life of her husband, paid to such general agent at Mobile, in Confederate currency, the premium which became due on that day. *Held*, that this was a valid and effectual payment. 1872. *Sands v. N. Y. Life Ins. Co.* (50 N. Y. 626), X, 535.

142. As to payment of premiums — waiver. In July, 1857, W., a resident of Virginia, procured from the defendants an insurance upon the life of S., his debtor. The defendants were an insurance company organized under the laws of New York, and the insurance was effected through their agent in Richmond. The policy provided that the risk should determine if the premium was not paid when due; also, that no payments of premiums should be binding on the company unless the same was acknowledged by a printed receipt, signed by an officer of the company. The premiums were paid to the agent, and receipts given, signed by an officer until July, 1861, when the premium was paid, but only the receipt of the agent given. In July, 1862, the premium was tendered when due, to the agent, who refused to receive it, on the ground that the company had directed him that the premiums must be paid in New York. S. dying shortly after, this action was brought on the policy. *Held*, that the breaking out of the war did not annul the contract between the parties, nor revoke the authority of the agent; that the company had no power to require payment of premiums to be made in New York; that by neglecting to supply their agent with printed receipts, signed by an officer, the company had waived the provision in the policy making such receipts evidence of payment; and that, therefore, the company were liable for the amount of the insurance, less the last premium, which had not been paid. 1870. *The Manhattan Life Ins. Co. v. Warwick* (20 Gratt. Va. 614), III, 218.

143. — The New York Life Ins. Co. issued its policy to C., a resident of Virginia, on the life of her husband, in 1858, containing a provision that, if the yearly premiums were not paid on or before the several dates of payment

therein mentioned, the policy should cease and the company should not be liable for any part of the sum insured. The husband died in 1864, being after the beginning of the civil war, leaving the premiums for 1862, 1863 and 1864 unpaid, the agent of the company in Virginia having refused payment for these years. *Held*, that the civil war did not dissolve the contract of insurance; that the non-payment of the three last premiums, in view of the state of war between the north and south, did not avoid the policy, and that C. could recover the sum insured, less the aggregate amount of the three unpaid premiums. 1869. *New York Life Ins Co. v. Clopton* (7 Bush. Ky. 179), III, 290.

144. — In a suit brought on a life insurance policy, issued on the life of S., of Mississippi, by a New York company, and conditioned on the payment of annual premiums, the bill alleged that S. died in 1862, that all the annual premiums from December, 1851, until his death, were paid, except the note due December, 1861, which was tendered to B., the agent of the company, resident in Mississippi, who declined to receive it, the rebellion having begun. *Held*, that the bill presented a *prima facie* case for relief. 1871. *Statham v. The New York Life Insurance Co.* (45 Miss. 581), VII, 787.

145. — war. A wife insured the life of her husband, a resident of Georgia, in 1859, in a New York insurance company, and paid the annual premiums promptly until 1862, but then failed to pay said premiums until March, 1865, when the husband died, after which, and after the close of the war, she tendered the unpaid premiums, and demanded payment of the sum insured, alleging that she was prevented by the war and by act of congress from paying them year by year, on the day fixed in the policy. In an action on the policy, *held*, that the wife could not recover. 1871. *Dillard v. The Manhattan Life Insurance Company* (44 Ga. 119), IX, 167, and *note*, 169.

146. — A complaint alleged that, in 1849, the defendant, a New York life insurance company, issued to the plaintiff, a resident of the State of Georgia, a life policy upon the life of her husband, containing a clause that, in case of the non-payment of the annual premiums, the said policy should "cease and determine," and all previous payments made thereon should "be forfeited to the company;" that the annual premiums fell due on the 2d of April, in each year, and were paid regularly up to and including the year 1861; that the plaintiff was ready and willing to pay the premium falling due April 2, 1862, and those falling due during the existence of the civil war; that, in consequence of the war, all intercourse was interrupted and forbidden by the laws of the United States, and the plaintiff was thereby prevented from making such payment; but as soon as communication was re-established, after the war, she tendered payment of the accrued premiums, but the defendant refused to receive them, and declared the policy canceled and forfeited. The plaintiff asked that she might be permitted to make the payments and that the policy be declared valid; or that the defendant be compelled to pay back the premiums paid, with interest, and the dividends, etc. *Held*, on demurrer, that the contract was not dissolved, but merely suspended by the war; that the payment of the premiums during its existence was legally excused, and the tender revived the policy; that the case was a proper one for the exercise of

the equitable powers of the court, and that a judgment sustaining the demurrer was erroneous. 1872. *Cohen v. N. Y. Mut. Life Ins. Co.* (50 N. Y. 610), X, 522, and note, 535.

147. — A contract of life insurance, between citizens of different States, lawful in its inception, and upon which large sums of money have been paid for premiums, is not dissolved by war between the States. The contract remains. The remedy, simply, is suspended, but revives with the return of peace. *Id.*

6. Miscellaneous.

148. **For benefit of wife.** On the application of a wife, a policy of insurance on the life of her husband was issued for her sole benefit, and, in the event of her death before her husband, for the benefit of her children. The wife having died leaving children, the husband surrendered the policy to the company and procured another, likewise on his own life, for the same amount at the same premium, ante-dated to correspond with the date of the former policy, and made payable solely to himself. The husband soon died. *Held*, that the children were equitably entitled to the proceeds of the substituted policy as against the creditors of the husband. 1869. *Chapin v. Fellowes* (86 Conn. 182), IV, 49.

149. — A life insurance policy, taken out by a husband on his own life for the benefit of his wife, is assignable during his life, with her consent, as collateral security for his debts where there is no statute directly prohibiting it, and she is debarred, by the assignment, from recovering the proceeds of the policy. 1871. *Charter Oak Life Ins. Co. v. Brant* (47 Mo. 419), IV, 828.

150. **Rights of pledgee of policy.** A resident of Illinois insured his life with a company chartered in Massachusetts, by a policy payable to his representatives or assigns, and conditioned to be void if assigned without the written consent of the company, which policy he afterward delivered, without the company's consent, to the plaintiff, a resident of Massachusetts, as security for a debt. Upon his death, an administrator of his estate was appointed in Illinois, and afterward, the debt being unpaid, the plaintiff was appointed ancillary administrator in Massachusetts. The principal administrator sued the insurers upon the policy in Illinois, and their agent duly accepted, in pursuance of a State statute, service of the summons and of an injunction not to pay the policy to the creditor. The plaintiff, as ancillary administrator, then sued on the policy in Massachusetts, and the insurers in answer admitted their liability, and expressed a willingness to pay the policy to the person entitled. *Held*, that the pendency of the first suit was no bar to the second, and that the plaintiff could recover the amount of the policy in preference to the principal administrator, inasmuch as he represented the equitable interest and possessory right of the pledgee of the policy. 1869. *Merrill v. New England Mut. Life Ins. Co.* (108 Mass. 245), IV, 548.

151. **Creditor's right to proceeds.** A policy of insurance on the life of B. was made payable to M., who held it for the benefit of a creditor of the insured, although without the knowledge of the creditor. B. having died, *held*, that an action lay against M. by the creditor for so much of the proceeds of the policy as would satisfy the debt. 1871. *Hutchings v. Minor* (46 N. Y. 456), VII, 369.

152. Action — parties. A policy of life insurance provided that in case of the death of the assured "the amount of said insurance shall be payable to their children for their use, or their guardian, if under age." *Held*, that an action on the policy was well brought by the guardian *ad litem* of the children, being under age. 1871. *Price v. Phenix Mutual Life Ins. Co.* (17 Mimm. 497), X, 166.

V. MARINE INSURANCE.

153. Policy. A policy of insurance against all marine risks is just as binding and effectual as if the risks are specified in detail. 1868. *Parkhurst v. Gloucester Mutual Fishing Insurance Co.* (100 Mass. 301), I, 105.

154. Barratry. Those risks include barratry of the master and mariners; and it is immaterial that the assured was the owner of the vessel and appointed the master and mariners. *Id.*

155. Insurable interest — mortgagee. The mortgagee of a vessel has an insurable interest, distinct from that of the owner, and can recover upon an insurance against barratry of the master, "unless the insured is owner of the vessel," even where the loss occurs by reason of such barratry. 1868. *Clark v. Washington Insurance Co.* (100 Mass. 509), I, 135.

156. Time policy. In an action on a policy of marine insurance on a vessel, effected April 9, 1866, "for one year from March 14, 1866, at noon," it appeared that the agent of the company, for receiving and forwarding applications, in his letter of April 9, stated that the vessel "was at Gibraltar" March 14. *Held*, that the statement of her whereabouts was immaterial. 1871. *Vigoreaux v. Lime Rock Insurance Co.* (59 Me. 457), VIII, 428.

157. — Under a time policy of marine insurance, it is immaterial where the vessel may be at the inception or termination of the risk. *Id.*

158. Port of discharge. A vessel arrives at a "port of discharge," when she arrives at any place at which it is usual to discharge cargo, and to which she is destined for the purpose of discharging cargo. Upon her arrival at that place, a policy, insuring her until arrival at a "port of discharge," terminates, and cannot be extended or revived after she has discharged part of her cargo there, by her removal to another port, or to another place in the same port, either for the purpose of discharging the rest of her cargo, or for any other purpose. 1870. *Bramhall v. Sun Mutual Insurance Co.* (104 Mass. 510), VI, 261.

159. Prohibited port. An insured vessel was sailing toward a prohibited port with the intention of entering, when she was lost at sea. *Held*, that the policy was not avoided. 1872. *Snow v. The Columbia Insurance Co.* (48 N. Y. 624), VIII, 578.

160. — A warranty not to use a certain port means not to go into it; an intention to use a prohibited port does not violate the policy. *Id.*

161. — A marine insurance company issued its policy on plaintiff's vessel, containing a clause as follows: "Prohibited from the river and gulf of St. Lawrence, Northumberland straits, or Cape Breton, and Black sea, between October 1 and May 1." The vessel was in one of the prohibited ports in March.

soon after the insurance was effected, and was lost at sea many months afterward. *Held*, that the implied warranty of the clause contained in the policy had been broken, and plaintiff could not recover. 1869. *Odions v. New England Mut. Ins. Co.* (101 Mass. 551), III, 401.

162. Deviation. A policy of insurance was issued on a vessel undergoing repairs in New York, "at and from New York to Havana." On the completion of the repairs, the vessel went on a trial trip to Elizabethport, sixteen miles distant, and to take in coal. She returned to New York, and sailed thence to Havana. *Held*, a deviation so as to avoid the policy. 1872. *Fernandez v. The Great Western Insurance Co.* (48 N. Y. 571), VIII, 571.

163. On a passage. A vessel insured for a year by a policy containing the provision that if she was "on a passage at the end of the term" the risk was to continue until her arrival at port of destination, sailed from the Chincha Islands for the Canary Islands, put into Callao, on the mainland (which is the port of entry for the Chinchas), for the necessary clearance, water and crew for her further voyage." While there the year expired. *Held*, that she was not "on a passage" within the meaning of the policy. 1869. *Wash. Ins. Co. v. White* (108 Mass. 238), IV, 548.

164. Abandonment. To warrant the abandonment of a stranded vessel as a total loss, it must appear, to the satisfaction of the jury, that the delivery of the vessel from the peril was, upon reasonable grounds, judged to be impracticable, or not to be effected unless at an expense that would absorb all her value. 1870. *Copelin v. The Phoenix Insurance Co.* (46 Mo. 211), II, 504.

165. — The owner of a vessel, abandoned as a total loss, is not bound to receive her from the underwriters if there is any material deficiency in her repairs, nor unless she be repaired and returned within a reasonable time. *Ib.*

166. — A policy of marine insurance was issued on merchandise against "perils of the sea," "free of particular average only." The vessel was subsequently wrecked, and with the cargo was abandoned by the master in good faith; but the insurers refused to accept the abandonment, and afterward recovered from the wreck some of the cargo. *Held*, that, as the loss was total to the insured, they were entitled to recover on the policy. 1870. *Wallerstein v. Columbian Insurance Co.* (44 N. Y. 204), IV, 664.

167. Loss — what is measure of damage. In an action on a policy of marine insurance issued upon a cargo of corn, it appeared that only a portion of the corn was damaged. *Held*, (1) that, by the terms of the policy, loss, if any, being "payable to the Bank of Montreal in funds current in the city of New York," the premium on gold should not be allowed in estimating the amount to be paid by the insurers; (2) that the measure of damages, in such cases, is not the difference between the market value of sound and damaged corn, but such a proportion of the valuation fixed in the policy as the difference between the market value of sound and damaged corn bears to the market value of sound corn; (3) that charges for surveys, inspection and sale at auction, being reasonable, are part of the loss; and (4) that amounts paid for insurance while retaining the cargo in store, and charges for storage, being unreasonable, are

not part of the loss. 1870. *Lamar Insurance Co. v. McGlashen* (54 Ill. 513), V, 162.

168. In computing a partial loss, returned duties received by the insured from the custom-house are not to be deducted from the amount to which the insurers are to contribute. 1871. *Cory v. Boylston Fire & Marine Insurance Co.* (107 Mass. 140), IX, 14.

169. A warranty "that the vessel be commanded by a captain holding a certificate from the American Shipmasters' Association," means a valid and subsisting certificate. 1868. *McLoon v. Commercial Insurance Co.* (100 Mass. 472), I, 129.

170. Warranty against lading—dunnage. A policy of insurance upon a ship contained the clause: "Warranted not to load more than her registered tonnage," with certain specified articles, including coal. *Held*, that the warranty was not broken by taking on board, besides the amount limited as a cargo, a quantity of coal as dunnage, that being a suitable article for the purpose, and it appearing that it was so used in good faith, and no more than was necessary, even though freight was received for its carriage. 1869. *Thwing v. Great Western Insurance Co.* (103 Mass. 401), IV, 567.

171. Bursting of boilers. A policy of marine insurance expressly excepted, from the perils insured against, "damage that might be done from the bursting of boilers," but provided that only "loss or damage occurring subsequent to and in consequence of the bursting of boilers is covered by this policy." The boiler of the vessel burst and she was immediately submerged. *Held*, that, as the vessel was rendered worthless the moment the rents and apertures were made, the policy did not cover the loss. 1870. *Evans v. The Columbian Insurance Co.* (44 N. Y. 146), IV, 650.

172. Leakage. A policy of marine insurance on champagne wine provided that the insurers should not be liable for leakage, unless occasioned by stranding or collision. *Held*, that the insurers were exempt from liability for all leakage, ordinary or extraordinary, and from whatever cause, whether gradual or violent in its operation, except those specified. 1871. *Cory v. Boylston Fire and Marine Insurance Co.* (107 Mass. 140), IX, 14.

173. Dampness—contact with sea water. In a policy of marine insurance on champagne wine, valued by the case, it was provided that the insurers should not be liable "for damage or injury to goods by dampness, rust, change of flavor, or by being spotted, discolored, musty or mouldy, unless the same be caused by actual contact of sea water with the articles damaged, occasioned by sea peril." *Held*, that so far as the sea water came into actual contact with any case or package, the insurers were liable for any injury occasioned, either by such direct contact or by any heat or dampness thereby generated, but not for any injury by dampness, or change of flavor to other packages, no part of which came into actual contact with the sea water. *Id.*

174. Under the suing and laboring clause in a policy of marine insurance the underwriters are liable for a proportion of any reasonable expenses incurred in preserving the property from the operation of the perils insured against,

but not for expenses of ascertaining the amount of the loss, nor for expenses of refitting the property for market. 1871. *Cory v. Boylston Fire and Marine Insurance Co.* (107 Mass. 140), IX, 14.

175. **Freight insurance.** A vessel, under a policy of freight insurance, while on her voyage was disabled, unloaded her cargo and was laid up for repairs, but winter set in and she was unable to proceed on account of the ice, whereupon the master voluntarily surrendered the cargo, free of freight, to the underwriters of the shippers. *Held*, that the free surrender was premature and that no recovery of freight-money could be had on the cargo thus surrendered. 1871. *Allen v. Mercantile Mutual Insurance Co.* (44 N. Y. 487), IV, 700.

176. **Subrogation.** Where a loss, partially covered by insurance, is occasioned by a wrong-doer, the insurer, after paying the insurance, is, in a proper case, entitled to be subrogated *quoad hoc*, to the right of the assured against the wrong-doer. If the assured sustains a loss beyond the amount of the insurance, he has a right to have it satisfied by an action against the wrong-doer. And if, in such action, there comes into his hands any sum for which he ought to account to the insurer, re-imbursement will, to that extent, be compelled in an action by the latter. But the assured will not be required to account for more than the surplus remaining in his hands, after satisfying his own excess of loss, in full, and expenses incurred, unless the insurer shall have contributed to, and joined him in the prosecution. 1872. *Newcomb v. Cincinnati Insurance Co.* (22 Ohio St. 882), X, 746.

177. **Action by company as assignee of bill of lading.** A's property, which was insured by B, an insurance company, was lost while being transported upon the Mississippi river. A, for the purpose of effecting a settlement with B, assigned to the latter the bill of lading and his claim against the owner of the vessel occasioning the loss. *Held*, that B could maintain an action as assignee and in his own name against the owner; and that the unseaworthiness of the vessel and the doubtful liability of the plaintiffs on the policy would not invalidate the assignment or affect the right of plaintiff to recover. 1871. *Horne Insurance Co. v. Northwestern Packet Co.* (32 Iowa, 223), VII, 183.

See REMOVAL OF CAUSE.

INTEREST.

1. **In action against carrier.** In case of loss for which a carrier is found liable interest is recoverable upon the value of the property from date of loss. 1869. *Mote v. Chicago, etc., R. R. Co.* (27 Iowa, 22), I, 212.

2. **Administrators will be charged interest in case of unnecessary delay in settling the estate; and compound interest in case they use the funds in private speculation.** 1870. *Johnson v. Hedrick* (89 Ind. 129), V, 191.

3. **During civil war.** Interest continues to run in time of civil war on debts due from a citizen of one belligerent to a citizen of the other. 1870. *Spencer v. Brower* (32 Tex. 663), V, 254, but see *note*, 255.

4. **On coupons.** Interest, by way of damages, is recoverable upon the overdue coupons or interest warrants of railroad bonds, from the time of demand

and refusal of payment. 1864. *Whitaker v. Hartford, etc., R. R. Co.* (8 R. I. 47), V, 547.

5. *Act imposing interest on prior debts void.* An act providing that debts not theretofore bearing interest shall bear interest, is void so far as it relates to debts contracted before its passage. 1868. *Goggans v. Turnipseed* (1 S. C. N. S. 80), VII, 28.

6. *Interest on interest.* When a promissory note is given, with a stipulation that the interest is to be paid annually or semi-annually, the maker is chargeable with interest at the like rate upon each deferred payment of interest, as if he had given a promissory note for the amount of such interest. By this mode of computation compound interest is not given, but a middle course is taken between simple and compound interest. 1873. *Bledsoe v. Nizon* (69 N. C. 89), XII, 642.

See **BILLS AND NOTES: BANKS AND BANKING; PARTNERSHIP.**

INTERNAL REVENUE.

1. *Penalties.* Under the United States Statutes of 1862, ch. 119, § 31, or 1864, ch. 173, § 41, an informer cannot sue an internal revenue collector, in a State court, for a share of a penalty paid to the collector, unless the penalty has been recovered by a judgment of a United States court. If a penalty is paid by compromise or agreement, before final judgment, neither of these statutes gives an informer any share therein. 1870. *Rice v. Thayer* (105 Mass. 258), VII, 516.

2. *Lien for.* The fixtures and furniture of the tenant of a distillery, upon which the United States had a lien, were sold under an execution issued on a judgment obtained against him by a creditor in a State court. *Held*, that the property was not sold subject to the lien, but that the lien was to be first discharged. The lien of the United States on the proceeds is superior to that of the judgment creditor or of the landlord for rent. 1871. *Dungan's Appeal* (68 Penn. St. 204), VIII, 169.

See **SALE.**

INTERNAL REVENUE STAMPS—*See* **STAMPS.**

INTERNATIONAL LAW—*See* **WAR.**

INTOXICATING LIQUOR—*See* **JURY.**

JAILER—*See* **ESCAPE.**

JETTISON—*See* **SHIP AND SHIPPING.**

JUDGE.

A judge of probate appointed his wife's brother administrator of an estate of which her father was a principal creditor. *Held*, that the judge was disqualified by personal interest, and that the appointment was void. 1870. *Hull v. Thayer* (105 Mass. 219), VII, 518.

JUDICIAL NOTICE.

1. The statute of another State must be introduced in evidence; a court will not take judicial notice of it. 1870. *Hunt v. Johnson* (44 N. Y. 27), IV, 681.

2. Courts will take judicial notice of acts creating municipal corporations. 1871. *Prell v. McDonald* (7 Kans. 426), XII, 423

JUDGMENT.

I. OF ANOTHER STATE.

II. ACTIONS ON.

III. MISCELLANEOUS.

IV. AGAINST MARRIED WOMAN — *See* MARRIAGE.V. IN CRIMINAL CASES — *See* CRIMINAL LAW.

I. OF ANOTHER STATE.

1. A judgment of another State cannot be impeached by showing irregularity in the forms of proceeding, or a non-compliance with some law of the State where the judgment was rendered relating thereto, or that the decision was erroneous. Jurisdiction confers power to render the judgment, and it will be regarded as valid and binding until set aside in the court in which it was rendered. 1871. *Kinnier v. Kinnier* (45 N. Y. 535), VI, 132.

2. — But the record of such judgment may be contradicted as to the facts necessary to give the court jurisdiction, and if it be shown that such facts did not exist, the record will be a nullity, notwithstanding it may recite that they did exist. 1872. *Marz v. Fore* (51 Mo. 69), XI, 432 and *note*; *Hoffman v. Hoffman* (46 N. Y. 30), VII, 299; *People v. Dawell* (25 Mich. 247), XII, 260.

3. — In a suit brought upon a judgment rendered in another State, the record of which showed that the defendant appeared and pleaded therein, defendant set up an answer that he was never served with process in the original action, did not know of the action, and did not authorize any one to appear for him, and that he had a good defense to such action upon the merits. *Held* (WAGNER, J., dissenting), that the answer was good. 1872. *Marz v. Fore* (51 Mo. 69), XI, 432, and *note*, 435.

4. — Judgments in divorce suits, as in other cases, may be impeached and set aside for fraud. 1871. *Adams v. Adams* (51 N. H. 388), XII, 134.

5. — *how far conclusive.* The courts of the State in which a judgment of a court of another State is sought to be enforced have a right to inquire how far the judgment presented may be conclusive in the State in which it was rendered. And in determining this question the courts of this State will require that the whole record of the proceedings be produced under which the judgment was obtained, in order to show how far it may be conclusive. 1871. *McLaren & Co. v. Kehler* (28 La. An. 80), VIII, 591.

6. — If a judgment of the inferior jurisdiction of another State has been appealed and the Supreme Court has pronounced a final judgment thereon, and the judgment or demand passed upon is sought to be enforced in this State,

the record or proceedings of the Supreme Court, being the final judgment in the cause, is the proper transcript to present to enable the courts of this State to ascertain how far it is conclusive in the State where it was rendered. *Ib.*

7. — Although a judgment of a court of another State, between the same parties, upon the same cause of action, upon the merits, is conclusive, yet, to conclude the parties, it must be a definite judgment on the merits only; not a mere interlocutory order, made upon a special application, and not settling and adjudging finally the rights of the parties. 1872. *Brinkley v. Brinkley* (50 N. Y. 184), X, 460.

8. — *judgment in rem.* A judgment, rendered in another State in a proceeding *in rem* where the defendant is at the time a resident of this State, and has not been served with notice of the pendency of the action, and has not appeared therein, has no binding force or effect upon the defendant *in personam*, so that an action can be maintained thereon in this State to recover the amount of the judgment. 1871. *Melhop v. Doane* (31 Iowa, 397), VII, 147.

9. — But where property of a defendant residing in this State, who was not personally served and who did not appear, has been seized and sold in satisfaction of a judgment rendered in a proceeding of attachment in another State, he is concluded from recovering the value thereof in an action in this State against the plaintiff in the foreign judgment, unless in a proper case he can show that it was procured through fraud. *Ib.*

II. ACTIONS ON.

10. — *action on.* An action may be maintained on a judgment rendered in another State, notwithstanding an appeal from such judgment is pending. 1870. *Taylor v. Shew* (39 Cal. 536), II, 478.

11. — Plaintiff recovered judgment in Louisiana against the defendant, and on this unsatisfied judgment, again recovered judgment in New York. After the recovery of the first judgment, the judgment debtor in New York made a voluntary conveyance to his son of land owned by him in Texas; and, pending the suit in New York, the son, without consideration, conveyed said land to a stranger charged with notice of all the facts. All of the parties were non-residents. This action was commenced on the New York judgment by attachment, to set aside the conveyance and to subject the lands to the payment of the claim. *Held*, that the action was properly brought, and that the plaintiff could maintain the action without first recovering judgment upon such demands in an independent action brought in a court of this State. 1870. *Ward v. McKensie* (33 Tex. 297), VII, 261.

12. — *bar to action on same demand.* Plaintiff had a valid, unsatisfied judgment in another State, which defendant had not attempted to avoid. He sued on the original demand, and defendant plead the judgment in bar. *Held*, that the plaintiff could not recover. 1870. *Henderson v. Staniford* (105 Mass. 504), VII, 551.

13. *To an action on a judgment, accord and satisfaction is a good defense* 1872. *Savage v. Everman* (70 Penn. St. 815), X, 676.

III. MISCELLANEOUS.

14. A judgment against an administrator, in the form that "plaintiff have and recover from the defendant's administrator" the sum adjudged, is sufficient, although the better mode would be to have added the words, "to be levied of the goods and chattels of his intestate, in his hands to be administered." 1870. *Guice v. Sellers* (48 Miss. 52), V, 476.

15. Non obstante veredicto. Where a general verdict is rendered for plaintiffs, accompanied with special findings to interrogatories, which findings are inconsistent with any theory upon which the plaintiffs could recover, defendant is entitled to judgment *non obstante veredicto*. 1871. *Snyder v. Robinson* (85 Ind. 811), IX, 738.

See GOLD CONTRACT.

JUDGMENT CREDITOR.

1. A judgment creditor has no insurable interest in the property of his debtor. 1869. *Grovenmeyer v. Southern Insurance Co.* (63 Penn. St. 840), I, 420.

JURISDICTION.

1. Conflict of. Where the United States court and a state court have a concurrent jurisdiction, the court first acquiring jurisdiction of any matter retains it to the exclusion of the other. 1869. *Hines v. Rawson* (40 Ga. 356), II, 581.

2. The unexercised jurisdiction of the United States courts over a question does not oust a State court of jurisdiction when the question arises collaterally by way of a defense to an action in which the State has jurisdiction of the parties and the subject-matter. 1872. *Wilkinson v. Wait* (44 Vt. 508), VIII, 391

3. Contract for construction of vessels. The enforcement of a lien created by State laws for labor performed and materials furnished in building vessels belongs exclusively to State tribunals. 1868. *Foster v. The Richard Busted* (100 Mass. 409), I, 125. 1870. *Sheppard v. Steele* (48 N. Y. 52), III, 660. 1870. *Sinton v. Steamboat Roberts* (84 Ind. 448), VII, 229.

4. — for equipment. Where a contract was entered into between a ship-owner and a ship-chandler, both citizens of the State, for the supply of sails, cordage, ropes, etc., for a schooner built and launched in another State, *held*, (1) that the contract being for the original equipment of the vessel was not a maritime contract, and so not within the admiralty jurisdiction of the federal courts; (2) that though the contract were within the admiralty jurisdiction, yet in cases arising upon the lakes, that jurisdiction is not exclusive, but concurrent with that of the State courts over remedies given by State laws; (3) that the State statute creates a lien upon the vessel in such cases, which may be enforced, notwithstanding subsequent changes of ownership; (4) that such lien attached as soon as the vessel reached this State; and that all persons acquiring a subsequent interest in her, acquire it subject to such lien; (5) that the act of congress concerning the necessity of registering bills of sale, mortgages, etc., relates to written conveyances only, and contains nothing which can defeat liens under the State laws. 1870. *Thorsen v. Schooner J. B. Martin* (26 Wis. 488), VII, 91, and *note*, 96.

5. — **repairs.** An attachment was issued against a vessel navigating the Yazoo and Mississippi rivers, to recover for repairs. These rivers were navigable by vessels of ten tons burden and upward from the sea; the vessel was a steamboat owned and having her "home port" in Mississippi. *Held*, that the vessel was within the maritime jurisdiction of the United States; that the State courts had no jurisdiction of the subject-matter, and could not be invested with such jurisdiction by the legislature of the State. 1869. *Dever v. Steamboat Hope* (42 Miss. 715), II, 643.

6. — A proceeding by attachment or provisional seizure, when taken out against a vessel belonging to a port of one State, while lying in a port of another State, to enforce a claim for repairs and materials furnished at the latter port is a proceeding *in rem* or in admiralty, and the State courts are without jurisdiction, notwithstanding an act of the legislature authorizing such a proceeding. But in such a case, where the master has also been personally cited and is sought to be made liable in his individual capacity, the State courts, although without jurisdiction to proceed *in rem* by provisional seizure, have jurisdiction of personal action. 1871. *Southern Dry Dock Co. v. Steamboat J. D. Perry, Captain Baird and Owners* (23 La. An. 39), VIII, 585.

7. **Maritime demand — wharfage.** A demand for wharfage is a maritime demand cognizable in the courts of admiralty, and a State statute attempting to confer jurisdiction upon a State court, by proceedings *in rem* therefor, is void. 1871. *Brookman v. Hammill* (43 N. Y. 554), III, 731.

8. In an action at law upon a bill of lading, to recover for the loss of property caused by a vessel navigating the Mississippi river, *held*, that the State court had jurisdiction. 1871. *Horne Insurance Company v. The Northwestern Packet Company* (32 Iowa, 223), VII, 183.

9. **Maritime tort.** A proceeding *in rem* against a vessel for the recovery of damages for a maritime tort can be enforced only by the courts of the United States. 1870. *Young v. Ship Princess Royal* (23 La. An. 383), II, 731.

10. **Jurisdiction of State courts of actions for personal injuries on bays and arms of the sea.** In a suit by an administrator brought under a statute of the State to recover for the loss of life of his intestate, caused by being run over by defendant's steamboat in Narragansett bay, where the defendant contended that the jurisdiction of the State court depended entirely on the saving clause in the act of congress, 1789, chap. 20 § 9, saving to suitors a common-law remedy, and that this being a right of action given by statute, and not existing at common law, was not within that saving clause; *held*, that the intention of the saving clause was to have a remedy or right of action in those courts which proceed according to the course of common law as distinguished from admiralty proceedings, and that the action was maintainable in the State courts. 1869. *Chase v. The American Steamboat Co.* (9 R. I. 419), XI, 274; affirmed, 16 Wall. 523.

11. **Contracts as to patents.** A State court has jurisdiction of an equitable action on a bond conditional upon the validity of a patent. 1872. *Middlebrook v. Broadbents* (47 N. Y. 443), VII, 457.

12. — Also, to compel performance of an agreement to assign a patent. 1871. *Binney v. Annan* (107 Mass. 94), IX, 10.

13. — Also, of an action to rescind a contract for the sale of a patent right, brought on the ground of the false and fraudulent representations of the vendor as to its value. 1871. *Page v. Dickerson* (28 Wis. 694), IX, 532.

14. **Bankruptcy.** An assignee in bankruptcy may sue or be sued in the State courts, on claims for or against the bankruptcy estate. 1878. *Cogdell v. Ezum* (69 N. C. 464), XII, 657.

15. — A State court has no jurisdiction of a suit by an assignee in bankruptcy, to set aside a fraudulent conveyance. 1873. *Voorhies v. Frisbie* (25 Mich. 476), XII, 291.

16. — An action by an assignee in bankruptcy, under section 35 of the bankrupt law, to recover the value of goods transferred to defendants by the bankrupt in fraud of the provisions of said act, is penal in its character, and will not be entertained by the State courts. 1873. *Brigham v. Clafflin* (31 Wis. 607), XI, 638.

17. — In an action brought in a State court, by an assignee in bankruptcy to obtain control of certain property of the bankrupt alleged to have been fraudulently conveyed by him, *held*, that the State courts had concurrent jurisdiction with the federal courts to make a degree of title and possession of the property sued for. 1869. *Boone v. Hall* (7 Bush. Ky. 66), III, 288.

18. **Naturalization.** A court having original jurisdiction of some actions cognizable by the courts of law under what is known as the "common law of England," has "common-law jurisdiction" within the meaning of the act of congress relative to the naturalization of foreigners. 1870. *Matter of Conner* (39 Cal. 98), II, 427.

19. — A court in which the justice is the recording officer is not a court having a clerk within the meaning of the act of congress, and has, therefore, no jurisdiction over applications for naturalization. 1870. *State v. Whittemore* (50 N. H. 245), IX, 196.

20. **Removal of cause.** State courts have jurisdiction to hear an appeal from an order removing a cause from a State to a federal court, under the act of congress of March 2, 1867. 1869. *Akerley v. Vilas* (24 Wis. 165), I, 166.

21. **Detention in the military service.** The State courts have authority to inquire, upon a writ of *habeas corpus*, into the cause of detention of any prisoner held within the State by a military officer of the United States, and to order his discharge. 1870. *In re Tarble* (25 Wis. 890), III, 85.

22. A minor, under the age of eighteen, enlisted, declaring himself over eighteen years of age, but not swearing to the statement, and subsequently escaped, and was arrested as a deserter. On petition of the father of the recruit, a writ of *habeas corpus* was issued from a State court, and the prisoner discharged. *Held*, that the State court had jurisdiction. (DIXON, C. J., dissenting). 1870. *Ib.*

23. **Mandamus from United States against supervisors.** T. recovered judgment in the United States court upon coupon bonds of certain railroad stock issued by the county of L., the defense, that the supervisors had been enjoined by the State court from levying taxes to pay such bonds, being held insufficient. T. afterward procured a mandamus from the United States court, compelling the supervisors to levy a tax to pay his judgment, which the supervisors refused to do, because they had been enjoined by the State court, whereupon an attachment was issued by the United States court against them and they were arrested by the marshal. They were brought before the State court by writ of *habeas corpus*. *Held*, that the United States court had jurisdiction of the proceedings by mandamus, and that they must be remanded to the custody of the marshal. (BECK, J., dissented). 1869. *Ex parte Holman* (38 Iowa, 86), IV, 159.

24. **Where jurisdiction is obtained by fraud.** Where, for the purpose of obtaining jurisdiction of the person, a resident of the State is induced by false representations to go to another State, where he is served with a summons. *Held*, (1) that the jurisdiction so acquired by the foreign tribunal is fraudulently obtained; and that that fact constitutes a good defense to an action, brought in this State, upon a judgment rendered by it; (2) that the defendant is guilty of no laches in failing to appear in the action in which such judgment was rendered for the purpose of moving to dismiss the proceedings on the ground of the fraud; but that the defense of fraud in acquiring jurisdiction is properly interposed when, for the first time, the judgment is made a legal demand against him. 1871. *Dunlap v. Cody* (81 Iowa, 260), VII, 129, and *note*, 186.

25. **Courts have no power to enforce discretionary power.** The board of commissioners of a county, in pursuance of an act of the legislature, ordered that bonds of their county be issued for a loan to raise funds for building county buildings. In an action for a perpetual injunction against such acts, *held*, (1) that the board of commissioners was a court of inferior and limited jurisdiction; (2) that, where statutory powers are conferred on such a tribunal, and a mode of executing such powers is prescribed, the mode prescribed must be strictly pursued or the acts of such court will be *coram non judice* and void; (3) that, where such court has been intrusted with the exercise of discretionary powers, no court possesses the power to interfere with or control such discretion, if the acts done are within the power conferred, and have been performed in good faith. 1870. *English v. Smock* (34 Ind. 115), VII, 215.

26. **To recover duties imposed on articles after contract of sale.** An action by a vendor under act of congress of 1864, ch. 173, § 94 (18th U. S. Stat. at Large, 269), to recover the amount of taxes on the articles sold, *held*, that the State court had jurisdiction. 1869. *Ammidown v. Freeland* (101 Mass. 303), III, 359.

27. **The domicile of a deceased person is the place of primary and exclusive jurisdiction in the settlement of his estate.** 1871. *Leonard v. Putnam* (51 N. H. 247), XII, 106.

See CRIMINAL LAW; ECCLESIASTICAL LAW; INJUNCTION.

JURY.

1. On a motion for a new trial, the evidence of a juror as to the motives and influences which affected their deliberations is inadmissible. But a jurymen may testify to any fact bearing upon the question of the existence of any extraneous influence, although not as to how far that influence operated upon his mind. So a jurymen may testify in denial or explanation of acts or declarations outside of the jury room, where evidence of such acts has been given as ground for a new trial. 1871. *Woodward v. Leavitt* (107 Mass. 458), IX, 49.

2. The drinking of intoxicating liquors by jurors after they have retired to consider their verdict is such misconduct as will cause the verdict to be set aside. 1869. *Ryan v. Harrow* (27 Iowa, 494), I, 302.

3. — In a trial for murder, after the jury were charged and put in the care of a bailiff, the bailiff, with two of them, went to a liquor and billiard saloon, where other persons were drinking and playing billiards, and the bailiff procured for each of them a drink of brandy, ginger wine, nutmeg and sugar, which they drank, and which was paid for by one of them. The evidence showed that the bailiff asked the saloon-keeper if he could not fit up something for said jurors for the diarrhoea, but it does not appear where the other jurors were at the time when the two with the bailiff were in the saloon. There was no attempt to show that the jurors were really suffering from diarrhoea, how much liquor they drank, what effect it had upon their fitness to deliberate on the case, or in any other way to break the force of the showing made by the defendant. The jury brought in a verdict of murder in the first degree. *Held*, that this was such misconduct in the jurors as to require the setting aside of the verdict, and the granting of a new trial. 1871. *Davis v. The State* (35 Ind. 496), IX, 760, and *note*, 764.

4. — The fact that a juror, in a prosecution for homicide, during the progress of the trial used intoxicating liquor, combined with other curative agents, as a medicine, without medical advice, will not vitiate the verdict in the absence of any showing that it was so used without the knowledge of the prisoner or his counsel, or that its effects were intoxicating. 1871. *State v. Morphy* (33 Iowa, 270), XI, 122.

5. A deed offered in evidence to prove the plaintiff's title is competent for the consideration of the jury, and may be taken to their room with such other documentary evidence as is ordinarily committed to the custody of a jury, notwithstanding the deed contains conditions and reservations not binding upon the defendant; the jury being instructed that the deed is only competent to prove the plaintiff's title to the premises, and is not to be considered at all upon any other point. 1869. *Moore v. Davis* (49 N. H. 45), VI, 460.

6. Instructions. Where, after a jury have retired to consider their verdict, they again came into open court and, at their request, there received additional instructions in the absence of the defendant and his counsel; *held*, (1) that such instruction was not a privy instruction or communication to the jury; (2) that the giving of notice to absent counsel or suitors, before proceeding in causes in which they are interested, is a matter of grace or favor on the part of the

court, and not a legal obligation or duty. 1870. *Chapman v. The Chicago and Northwestern Railway Company* (26 Wis. 295), VII, 81.

7. **Polling.** After a sealed verdict was returned, but before it was opened, one of the jury became insane. The court received the verdict in the presence of the rest of the jury, and denied a request to have them polled. *Held*, error, and that a *venire de novo* should be granted. 1872. *Norrell v. Deval* (50 Mo. 272), XI, 413.

8. **Control of verdict.** A jury, having agreed upon a verdict, reduced it to writing, sealed it, and separated. When produced in court, the next morning, it was for the plaintiff, for \$6,000, and was entered upon the minutes of the court. On the polling of the jury, they failed to agree, and were directed by the court to retire to their room. The jury, having retired, returned for instructions as to whether they could increase their verdict. Being instructed that they might decide upon any verdict to which they all agreed, they brought in a verdict for the plaintiff for \$7,000. *Held*, no error. Until the polling of the jury takes place, and the assent of the jurors, either express or tacit, is given to the verdict, and the jury is dismissed, and has become no more a jury in the case, the verdict is, within certain limits, in the power of the jury, and, to a certain extent, within the direction of the court. 1878. *Warner v. The New York Central Railroad Company* (52 N. Y. 437), XI, 724.

9. **Grand jury.** A judge has no right to require a grand jury to have the witnesses on the part of the State examined publicly. 1878. *State v. Branch* (68 N. C. 186), XII, 633.

See CONSTITUTIONAL LAW ; CRIMINAL LAW.

JURY TRIAL — See CONSTITUTIONAL LAW ; REFERENCE.

JUSTICE OF THE PEACE.

A justice of the peace is not liable to an action for erroneously refusing to grant an appeal, such refusal being a judicial act. 1870. *Jordan v. Hanson* (49 N. H. 199), VI, 508, and *note*, 513.

LABOR.

Under law making ten hours a day's work. See CONTRACT.

LANDLORD AND TENANT.

1. **A covenant for quiet enjoyment** is implied in every mutual contract for the leasing and demise of land, by whatever form of words the agreement is made. 1870. *Mack v. Patchin* (42 N. Y. 167), I, 506.

2. — But the covenant, whether expressed or implied, only means that the tenant shall not be evicted or disturbed by good title in the possession of the demised premises or some part thereof ; it does not mean that the tenant shall be guarantied from all molestation or damage from the wrongful acts of strangers having no right or title to the demised premises or any part thereof. 1872. *Moore v. Weber* (71 Penn. St. 429), X, 708.

3. — Thus a lease embraced a building, built of wood, the sides being only lathed and plastered. Alongside of it was a brick building, built entirely on another lot, owned by another person. The owner of the brick building removed it, leaving the wooden building unprotected from the weather, on that side, in consequence of which, the lessee's goods and stock in trade were injured. *Held*, that the tenant had no right of action against the landlord for permitting the brick building to be torn down. *Ib.*

4. Defendant had for many years flowed plaintiff's land by a dam, paying an annual compensation therefor. In an action to recover damages for such flowage, *held*, that relation of landlord and tenant existed between the parties, and that plaintiff could not recover beyond the amount of the yearly compensation, without having given notice to quit. 1872. *Morrill v. Mackman* (24 Mich. 279), IX, 124.

5. A landlord erected, without the tenant's consent, a new building in the back yard, against the demised house, whereby two of the rooms, previously used as kitchen and bedroom, were made unfit for those purposes, and were, by reason of that unfitness, abandoned by the tenant. *Held* an eviction, so as to effect a suspension of the rent. 1870. *Royce v. Guggenheim* (106 Mass. 201), VIII, 322.

6. Duty of landlord as to repairs. Plaintiff occupied the lower portion of a house and another tenant the upper portion. The roof and upper story having been destroyed by fire, in an action by plaintiff against the landlord, the judge charged the jury that it was the landlord's duty to proceed with diligence, after the fire, to put on the roof, and that he was liable for damages to plaintiff caused by delay. *Held*, error, there being no express covenant to repair, and the maxim, *sic utere tuo*, etc., not applying. 1871. *Doups v. Genin* (45 N. Y. 119), VI, 47.

7. A covenant by a lessor to erect a building on the leased premises does not by implication impose upon him an obligation to re-build in case of the destruction of the building by fire during the term of the lease; nor does the destruction of the building and the refusal of the lessor to build relieve the lessee from his agreement to pay rent. 1870. *Conwell v. Lumley* (89 Cal. 151), II, 430.

8. Liability of landlord for negligent repairs. A landlord, being solicited by his tenant to have an out-house repaired, gratuitously undertook to make the repairs, and negligently and unskillfully performed the work, whereby the tenant's wife was subsequently injured. *Held*, that the landlord was liable for the injury. 1870. *Gill v. Middleton* (105 Mass. 477), VII, 548.

9. Liability of landlord for injuries occasioned by the leased premises. A landlord is liable for injuries occasioned by ice and snow falling from the roof of the demised premises, although the building was occupied by tenants who had covenanted to keep the premises in repair, where it does not appear that the roof was under the control of the tenants. 1869. *Shipley v. Fifty Associates* (101 Mass. 251), III, 346; *Shipley v. Fifty Associates* (106 Mass. 194) VIII, 318.

10. — Where there is no provision in a lease in regard to injuries, it is the duty of the person having control of the premises to keep a scuttle in the sidewalk in repair; and the owner of the premises will not be liable to an injured party for neglect to keep the scuttle in repair if it was in good condition when possession was given under the lease. 1870. *Fisher v. Thirkell* (21 Mich. 1), IV, 423.

11. — Defendant, owner of a building, rented the lower story to plaintiff and the upper stories to other tenants. There was, in the upper part, a water-closet to which all the tenants had access, and which, though properly constructed, had become out of order by reason of the negligence of the tenants, of which fact defendant had notice. *Held*, that defendant was liable for damages occasioned to plaintiff's goods by reason of the overflow of said closet. 1871. *Marshall v. Cohen* (44 Ga. 489), IX, 170.

12. — Plaintiff fell through the covering of a coal hole in the sidewalk. Defendant was the lessee of the premises to which the coal hole was appurtenant. The injury occurred by reason of the improper construction of the covering. *Held*, that defendant was liable, separately, or jointly with the lessor, and that no proof of notice of the defect to the lessee was necessary. 1872. *Irvine v. Wood* (51 N. Y. 224), X, 603.

13. Where property has been leased subsequent to execution of a mortgage thereon, the mortgagee, on entry for condition broken, may treat the tenant as a trespasser, and bring ejectment, even without notice; but if the mortgagee receives rent from the tenant the relation of landlord or tenant will be thereby created between them. The mere receipt of rent, however, will not revive the tenancy for the entire unexpired term of the lease, but only from year to year. 1871. *Gartside v. Outley* (58 Ill. 210), XI, 59.

14. **Covenant in lease — appraisalment.** Where a lessor and lessee of lands covenanted in the lease that, at the expiration of the term, the value of the buildings erected on the premises by the lessee should be appraised by appraisers and paid by the lessor. *Held*, that the right of the lessee to recover for the value of the buildings was not entirely dependent upon the making of the appraisalment, but that, nevertheless, he was bound to do all that was reasonably in his power to procure the stipulated appraisalment; also, that, in case the appraisers first selected failed to agree, the lessee must use all reasonable efforts in order to secure other appraisers; and that whether he has done so is a question for the jury. 1868. *Hood v. Hartshorn* (100 Mass. 117), I, 89.

15. **Removal of buildings erected by tenant.** A tenant erected buildings which he had a right to remove under the lease, subsequently he took a new lease, without reservation or mention of claim to the buildings; the landlord then conveyed the premises to L.; whereupon the tenant removed the buildings. In an action by L. against his grantor for breach of covenant of seisin and quiet enjoyment, *held*, (1) that the tenant's right to remove the buildings terminated with the acceptance of the new lease; and (2) that the removal being without legal right, the remedy of L. was against the tenant and not the landlord. 1871. *Loughran v. Ross* (45 N. Y. 792), VI, 173.

16. Option to continue. A lessee, in possession of premises under a lease "for the term of one year, with the privilege of having the same three years, at the option of the lessee," wherein he covenants "at the end of said term, to deliver up quiet and peaceable possession of said premises," signifies his election to hold for three years by simply remaining in possession after the expiration of the first year, and is not bound to give notice to the lessor. 1870. *Delashman v. Berry* (20 Mich. 292), IV, 892.

17. If a tenant for one or more years holds over, after the expiration of his term, the owner of the premises may treat him either as a trespasser or as a tenant for another year, upon the terms of the prior lease, so far as applicable; and the right of the lessor to elect to continue the tenancy is not affected by the fact that the tenant has refused to renew the lease, and has given the lessor notice that he has hired other premises. 1878. *Schuyler v. Smith* (51 N. Y. 309), X, 609.

18. Notice to terminate tenancy. Defendant hired of plaintiff a store for one year, from June 1, 1868, for a certain annual rent, payable quarterly, and the taxes. In May, 1869, defendant told plaintiff that he was looking for another store, but would like to remain, after the year, "at the same rate," either party to terminate the tenancy by one month's notice, in writing. Plaintiff assented. On June 1, 1869, defendant sent to plaintiff a notice, in writing, that he should "leave the store on July 1." The plaintiff being absent the notice was put in his office letter-box, where he found it the next day. In an action for a quarter's rent, and the taxes for 1869, *held*, (1) that the notice, under the agreement, need not expire at the end of the quarter, but might be given at any time during the tenancy; (2) that the notice took effect only from the time when the plaintiff received it, and on July 2; (3) that defendant was liable to pay only such a proportional part of the annual rent and taxes as a month and two days bore to a twelve-month. 1871. *May v. Rice* (108 Mass. 150), XI, 328.

19. Where tenant holds mortgage on leased premises. Where a tenant has a mortgage on the leased premises conditioned for the payment of a sum of money, on the day of the expiration of the lease, and the mortgage is not paid when due, the tenant may make title under his mortgage, without first yielding and surrendering the possession to the lessor and a subsequent tender by the mortgagor, will not terminate the tenant's estate. 1869. *Shields v. Loucar* (34 N. J. 496), III, 256.

20. Right of landlord to re-enter. When a tenancy has been legally terminated, the landlord may enter peaceably upon the premises; and, having so entered, he may remove the tenant therefrom, using such force as would sustain a plea of *molliter manus impositus*, and he may remove the tenant's goods if the tenant, after sufficient opportunity, neglects to do so, using due care and caution in their removal, and depositing them in a near and convenient place. And if, under such circumstances, the landlord bursts open a door, which the wife of the tenant has wrongfully fastened, removes the doors and windows, which make it uncomfortable for her to remain, and brings a dog into the house which, by barking, annoys her, such acts do not constitute an assault.

Acts which embarrass and distress do not constitute, although they may aggravate an assault. 1871. *Stearns and wife v. Sampson* (59 Ma. 568), VIII, 442.

21. — Right of landlord entitled to possession, to enter by force and remove the tenant. Cases considered *arguendo*. 1871. *Sterling v. Warden* (51 N. H. 217), XII, 80.

LARCENY — *See* CRIMINAL LAW.

LAW OF DOMICILE — *See* MARRIAGE.

LEASE — *See* LANDLORD AND TENANT.

LEGACY — *See* WILL.

LEGAL TENDER ACT.

In 1870 the legislature of Vermont authorized the State treasurer to pay, in gold coin, bonds issued before the passage of the "legal tender" act of congress, and due in 1871. Subsequently, the Supreme Court of the United States decided that the legal tender act applied to debts contracted before as well as after its passage; and the State treasurer refused to pay the bonds in gold coin. *Held*, that the payment of the bonds in gold could not be enforced. 1872. *Kellogg v. Page* (44 Vt. 356), VIII, 388.

LEGISLATIVE INVESTIGATION.

Privileges of witnesses on — *See* WITNESS.

LEGISLATIVE POWER.

1. The regulation of the keeping of dogs is within the police power of the legislature. 1868. *Blair v. Forehand* (100 Mass. 136), I, 94.

2. Neither a legislature nor a constitutional convention has power to grant new trials. 1873. *Lawson v. Jeffries* (47 Miss. 686), XII, 342.

3. Legislative power defined. 1871. *Com'r of Leavenworth v. Miller* (7 Kans. 479), XII, 425.

See CONSTITUTIONAL LAW; STATUTES.

LEGISLATION.

I. VALIDITY OF — *See* CONSTITUTIONAL LAW.

II. RETURN OF BILLS BY GOVERNOR — *See* CONSTITUTIONAL LAW.

III. CONSTRUCTION OF — *See* STATUTES.

LETTERS.

I. PRESUMPTION FROM MAILING.

II. CONTRACTS BY — *See* CONTRACTS.

III. ADMISSIBILITY IN EVIDENCE — *See* EVIDENCE.

I. PRESUMPTION FROM MAILING.

1. Mailing a letter, addressed to a merchant at his place of business, is *prima facie* evidence that it reached its destination subject to rebuttal by him. 1870. *Huntley v. Whittier* (105 Mass. 391), VII, 586.

2. There is no presumption of law that a letter mailed to one, at the place he usually receives his letters, was received by him. 1871. *First Nat. Bank v. McManigle* (69 Penn. St. 156), VIII, 236.

LEX LOCI.

1. **As to contracts.** In an action on a contract made in another State, the law of that State relative thereto will, in the absence of proof to the contrary, be presumed to be the same as the law of the former. 1871. *Hill v. Wilker* (41 Ga. 449), V, 540.

2. — The *lex loci contractus* governs as to the obligations of a contract; the *lex fori* as to the proof. 1869. *Downer v. Chesebrough* (86 Conn. 39), IV, 29.

3. — The effect of a conveyance made in New York of lands in West Virginia is to be determined by the law of West Virginia; but a contract, also made in New York, between citizens of that State, for the loan of money, to secure the payment of which such conveyance was executed, is to be governed, as to its nature, construction and validity, by the laws of New York. 1870. *Klinck v. Price* (4 W. Va. 4), VI, 268.

4. Where goods are lost by a carrier *in transitu* from one State to another, the *lex loci*, where the loss occurs, governs the rights of the parties. 1871. *Gray v. Jackson* (51 N. H. 9), XII, 1; *Barter v. Wheeler* (48 N. H. 9), VI, 434; but see as to passengers, *Dyke v. Erie Ry Co.* (45 N. Y. 113), VI, 43.

5. **Distribution of personal estate.** A resident of Maryland bequeathed a portion of his personal estate to his daughter, who was married, and a resident of Kentucky; but, before the distribution of the estate, the daughter died intestate, leaving her husband and two children surviving. After the distribution of the estate, the husband claimed the deceased wife's distributive share. *Held*, that the disposition of her share was governed by the law of Kentucky (that being her domicile), and that, accordingly, the husband was entitled to her entire distributive share. 1870. *Noonan v. Kemp* (34 Md. 73), VI, 307.

See CONTRACTS.

LIBEL — See SLANDER AND LIBEL.

LICENSE.

1. A State statute forbid non-residents to sell goods in a city of the State by card or sample without taking and paying for a license. *Held*, not in violation of the United States Constitution. 1869. *Ward v. State* (31 Md. 279), I, 50 reversed, 13 Wall. 418.

2. To enter upon property; cases considered. 1871. *Sterling v. Warden* (51 N. H. 217), XII, 30.

LIEN.

I. OF VENDOR — See VENDOR AND PURCHASER.

II. OF CARRIER — See CARRIER.

III. OF UNITED STATES — See INTERNAL REVENUE.

LIGHT — See EASEMENT.

LIMITATION OF ACTIONS.

I. GENERAL PRINCIPLES.

II. EXTENSION OR AVOIDANCE OF THE LIMITATION.

III. WHEN THE LIMITATION COMMENCES.

I. GENERAL PRINCIPLES.

1. The legislature may repeal a statute limiting the time for commencing civil actions, and thus deprive a party of the right to plead the statute as a defense. 1871. *Bradford v. Shine's Administrator* (18 Fla. 398), VII, 239.

2. Repeal of statute does not revive right of action. The law provided that all debts and demands against the estate of any testator or intestate, which shall not be exhibited within two years after notice given to that effect by the executor or administrator, shall forever afterward be barred. *Held*, that the repeal of this statute, after the expiration of the time so limited, did not revive the right to prosecute the claim, nor deprive the representative of a deceased person of his right to plead the bar, the right of action being extinguished in such case. *Ib.*

3. Cause once barred cannot be revived. After a cause of action has become barred by the statute of limitation, it cannot be revived by statute or constitutional amendment. 1870. *Girdner v. Stephens* (1 Heiskell, 280), II, 700.

4. Laws suspending action on past contracts constitutional. The constitution of Texas, adopted 1869, contains the following provision: "The statutes of limitation of civil suits were suspended by the so-called act of secession of the 28th of January, 1861, and shall be considered as suspended within this State until the acceptance of this constitution by the United States congress." *Held*, that this provision is not to be regarded as an *ex post facto* law, nor as a law impairing the obligation of contracts, and that it is not in conflict with the constitution of the United States. 1870. *Bender v. Crawford* (33 Tex. 745), VII, 270.

5. Parol promise not to plead. A parol promise by defendant not to plead the statute of limitation if plaintiff will allow him further time on a claim that is nearly outlawed, does not estop the defendant from setting up the statute in a suit brought upon that claim. Such promise, not being in writing, is not under the Code such an acknowledgment of indebtedness as will relieve the note from the operation of the statute of limitation. 1870. *Shapley v. Abbott* (42 N. Y. 443), I, 548.

6. — A party may waive the benefit of a statute founded in public policy, by omitting to set up the defense of the statute, but he cannot make a valid promise in advance to waive the benefit of such statute. *Ib.*

7. *Lex fori* governs. In an action on a promissory note given in Arkansas the defendant alleged that the action was barred by the statute of limitation of that State. *Held*, that the *lex fori* and not the *lex loci contractus* was to govern. 1870. *Carson v. Hunter* (46 Mo. 467), II, 529.

8. Does not run against the State. A statute of limitations does not run against the State in the absence of express legislative enactment. 1870. *Crane v. Reeder* (31 Mich. 24), IV, 480.

9. Where proceedings for the contest of a will are commenced within the statutory period of limitation, although only part of the persons interested are made parties thereto, the right of action is saved as to all who are ultimately made parties, notwithstanding some of them are not brought into the case until after the period of limitation has expired. The plaintiff in such a case cannot, by dismissing his petition, put an end to the proceeding, where either of the defendants filed a cross-petition before the period of limitation had expired, or the original petition was dismissed. 1870. *Bradford v. Andrews* (20 Ohio St. 208), V, 645.

II. EXTENSION OR AVOIDANCE OF THE LIMITATION.

10. To repel the statute of Limitations there must be such facts and circumstances as show that the debtor recognized a present subsisting liability, and manifested an intention to assume or renew the obligation. 1871. *Simonton v. Clark* (65 N. C. 525), VI, 752.

11. — Defendant wrote a letter to plaintiff stating that he had a certain sum of money and proposed giving it to his creditors for equal distribution, provided they would release him from all obligations; and that he extended the proposition to plaintiff for his decision. The offer was not accepted. *Held*, that the letter did not constitute such an acknowledgment or promise as would remove the bar of the statute of limitations. 1870. *Chambers v. Rubey* (47 Mo. 99), IV, 818.

12. During civil war. The statute of limitations barring the right to sue does not run during time of civil war, where the courts are not open to suitors. 1870. *Caperton v. Martin* (4 W. Va. 138), VI, 270.

13. — The act of the legislature of West Virginia, passed February 27, 1866, declaring that the period from April 17, 1861, to the date of the passage of the act, shall not be counted in computing the time under any statute of limitations, is constitutional. *Id.*

14. — The statute of limitations was suspended in Alabama between January 11, 1861, and September 21, 1865, that being the period during which the civil courts were virtually closed on account of the rebellion. 1870. *Coleman v. Holmes* (44 Ala. 124), IV, 121.

15. — In an action by a citizen of Louisiana against a citizen of Indiana, where the statute of limitations was pleaded as a defense, *held*, that the running of the statute was suspended during the civil war of the rebellion, which, for the purpose of determining the period to be excluded from the operation of the statute, must be considered to have commenced on the 18th day of August, 1861, and to have ended on the 20th day of August, 1866, according to the respective proclamations of Presidents Lincoln and Johnson. 1871. *Perkins v. Rogers* (35 Ind. 124), IX, 639, and *note*, 676.

16. — The courts of a county of Missouri were closed for a time in consequence of the rebellion. *Held*, that the statute of limitations did not cease to run for the time as to a promissory note made in the county. 1873. *McKinsie v. Hill* (51 Mo. 308), XI, 450.

17. **Promise to pay in Confederate money.** A promissory note, barred by the statute of limitations, is not revived by an offer to pay in Confederate currency or bank bills. 1871. *Simonton v. Clark* (65 N. C. 525), VI, 752.

18. **Where one of two joint administrators has an account against his intestate** which was barred by the statute of limitations before the death of the intestate, the bar will not be removed, and the debt revived by the statement or admission of his co-administrator that the account is correct. 1871. *Seig v. Acord's Executor* (21 Gratt. Va. 365), VIII, 605.

19. **Partnership note — admission of one partner.** In an action on a partnership promissory note, *held*, that admissions of one of the makers after the dissolution of the partnership, but before the statute of limitation had run, would remove the bar of the statute as to all the makers. 1869. *Beardsley v. Hall* (36 Conn. 370), IV, 74.

20. **Joint debtors.** A payment on account, or an acknowledgment, by one of two or more joint debtors, will not take the case out of the statute as to the others. 1872. *Bush v. Stowell* (71 Penn. St. 208), X, 694.

21. — In an action of assumpsit against the four makers of a joint note payable by installments, one of which had become due within six years, two of the defendants pleaded the statute of limitations, and there was proof of an acknowledgment by one as to the whole. There was a verdict for the plaintiff for the whole amount, "for \$692 whereof, and no more, two of the defendants, D. & H., are liable." *Held*, that a judgment for the plaintiff on the verdict was not erroneous. *Id.*

22. **Payment by maker of note — effect as to surety.** *It seems*, that a payment by the principal maker of a promissory note, before the statute of limitations has completed a bar, will not prevent the completion of the bar as to a co-maker who is a surety. 1871. *Knight v. Clements* (45 Ala. 89), VI, 693.

23. **Burden of proof.** In an action on a promissory note made by three persons against one of the makers who pleads the statute of limitations, and the plaintiff seeks to avoid the bar of the statute by a payment indorsed on the note before the bar was complete, the burden is upon him to prove that the payment was made by the defendant before the cause of action was barred. Such an indorsement is not, of itself, conclusive evidence to prove either by whom, or when, payment was made. *Id.*

III. WHEN THE LIMITATION COMMENCES.

24. **The statute of limitations does not continue to run against the claims of creditors of an insolvent debtor after his application for the benefit of the insolvent laws, and before an audit and order of the court distributing the insolvent's estate.** 1869. *Matter of Leiman* (82 Md. 235), III, 132.

25. **Non-residents — presence within the State.** In bar of an action on a draft the statute of limitations was pleaded. It appeared that seven years had elapsed since the cause of action accrued, and that the defendant was a resident of New Jersey, but had done business ten hours each day in New York ever since. *Held*, that if a *non-resident* can be allowed any time under the statute

of limitations, it must amount in the aggregate to six years of actual presence within the State in order to bar the action. 1871. *Bennett v. Cook* (48 N. Y. 587), III, 727.

26. On bid at sheriff's sale. Defendant purchased certain premises at a sheriff's sale, but, failing to pay his bid, the premises were re-sold by the same sheriff nearly a year and a half afterward for a less sum. In an action to recover the difference between the two bids, *held*, that the statute of limitations began to run from the time of the failure to pay the first bid. 1870. *Punk v. Smith* (66 Penn. St. 27), V, 826.

27. Against attorney for failure to collect note. An attorney gave a receipt for a note which he agreed to collect. In an action to recover for neglecting to collect the note, *held*, that the statute of limitations did not begin to run from the date of the receipt, but from a reasonable time afterward for beginning proceedings, and that seventeen months was more than a reasonable time. 1871. *Rhines' Admrs. v. Evans* (66 Penn. St. 192), V, 864.

28. Against vendee. The statute of limitations, barring a suit for specific performance, does not begin to run against a vendee in possession of land under an executory contract, until the time when, having performed the agreement on his part, he might have demanded his deed, and he can rely upon his equity under the contract, to defeat an action of ejectment on the part of the vendor. 1871. *Love v. Watkins* (40 Cal. 547), VI, 624.

29. Where a person agrees to reward another for services by testamentary bequests, the statute of limitation does not begin to run against the claim for such services until the death of the person. 1870. *Jilson v. Gilbert* (26 Wis. 687), VII, 100.

30. On note payable on demand with interest. The statute of limitation begins to run from the date of a note payable on demand with interest. 1872. *Wheeler v. Warner* (47 N. Y. 519), VII, 478.

31. To recover money paid under military orders. A sheriff paid the surplus of a sale on execution to another than the person entitled thereto, by order of the military authorities in Missouri. In an action on the sheriff's bond, *held*, that as the action was not commenced until after the lapse of two years from the time when the return showing the sale was made, it was barred by the statute of limitations, as enacted by congress in 12 Statute at Large, 757, which was applicable alike to causes in the federal and in the State courts. 1871. *State of Missouri v. Gatsweiler* (49 Mo. 17), VIII, 119.

32. Computation of time. A statute provided that every action on a judgment shall be brought within ten years next after the judgment was entered, and not afterward. Judgment was entered March 15, 1859, and an action was commenced on it March 15, 1869. *Held*, to have been commenced in time. 1871. *Warren v. Stade* (38 Mich. 1), IX, 70.

See ATTORNEYS; TAX; WAR.

LIQUORS. .

I. SALE OF—*See* CONTRACTS.II. DRINKING OF BY JURY—*See* JURY.LITERARY PROPERTY—*See* COPYRIGHT.LOCAL IMPROVEMENT—*See* ASSESSMENT; MUNICIPAL CORPORATION.

LOCAL OPTION LAW.

An act prohibiting the sale of liquors, the operation of which is made dependent upon a vote of the people in each county, is unconstitutional and void. 1871. *State v. Weir* (83 Iowa, 184), XI, 115, and *note*, 117.*

LOST BILL—*See* BILLS AND NOTES.

LOTTERY.

A State granted to a corporation for a certain consideration the franchise to conduct lottery schemes for a certain time. Before the expiration of that time lottery schemes were prohibited by an amended constitution. *Held*, that the franchise was not a contract, and, therefore, the prohibition was valid. 1870. *Mississippi Society v. Musgrove* (44 Miss. 820), VII, 723; *Moore v. State* (48 Miss. 147), XII, 367.

LUNATIC—*See* INSANITY.

MALICIOUS PROSECUTION.

1. When action for premature. A husband and wife commenced an action for a malicious replevin of their household furniture, alleging that the replevin suit was commenced with intent to injure the wife, and actually resulted in her injury by the removal of the furniture. It appeared that the replevin suit was still pending. *Held*, that the action could not be maintained. 1871. *O'Brien v. Barry* (106 Mass. 300), VIII, 329.

2. It is not necessary that a prosecution should terminate in an acquittal of the accused in order to sustain an action for malicious prosecution—the termination by a *nolle prosequi*, or abandonment, is sufficient. 1869. *Brown v. Randall* (36 Conn. 56), IV, 85.

3. — Declaration alleging that defendant maliciously, and without probable cause, procured the arrest and holding to bail of plaintiff, on a writ in a civil action, returnable at a certain time, at which the plaintiff appeared, but defendant did not nor was said writ ever returned. Demurrer on the ground that it appeared that the suit alleged to be malicious was not determined in favor of the defendant therein by a judgment of the court. *Held*, that the declaration was good. 1872. *Cardinal v. Smith* (109 Mass. 158), XII, 632.

4. Probable cause—malice. S. took a dog from B., whereupon B. made criminal charges against S. for larceny, but S. was discharged. S. then sued

* *See contra*, *State v. The Court of Common Pleas* (36 N. J. 72); 13 Am. Rep. 422, and *note* thereto; also *see Locke's Appeal*, 72 Penn. St. 291; 13 Am. Rep. — Ed.

B. to recover damages for malicious prosecution. *Held*, (1) that, even if dogs were not the subject of larceny, and the information was on this account defective, yet S. need not prove *express malice* as contradistinguished from that malice which the jury might infer from want of probable cause; (2) that the following charge to the jury embodied the true doctrine of probable cause: "The question of probable cause does not depend on the question whether S. was guilty in point of fact, nor whether B. in fact believed him guilty; but the question is, were the facts and circumstance, within B.'s knowledge, and upon which he acted, sufficient in themselves to raise a reasonable ground of suspicion in the mind of an ordinarily cautious man, and did B. believe S. guilty?" 1869. *Shaul v. Brown* (28 Iowa, 87), IV, 151.

5. — Where a civil suit is commenced and prosecuted maliciously and without reasonable or probable cause, and is terminated in favor of the defendant, the plaintiff in such suit is liable to the defendant in an action for the damages sustained by him in the defense of that original suit, in excess of taxable costs obtained by him; and, to maintain an action to recover such damages, it is not material whether the malicious suit was commenced by process of attachment or by summons only. 1869. *Closson v. Staples* (42 Vt. 209), I, 816.

6. **Damages.** An action for maliciously suing out a writ of attachment will lie, notwithstanding a bond given in the attachment suit, conditioned to pay all damages arising from the attachment; and in such an action the plaintiff is entitled to recover the consequential damages of the attachment to his business, credit and reputation, together with the counsel fees and expenses incident to the defense of the attachment suit. 1870. *Lawrence v. Hagerman* (56 Ill. 68), VIII, 674.

MANDAMUS.

1. **Title to office.** Mandamus does not lie to try and determine the title to an office; but where the relator held the proper certificate of his election to an office and had duly qualified, but had been refused possession by the former officer, whose term had expired, on the ground that he was not legally elected; *held*, that mandamus would lie to compel the former officer to deliver possession. 1870. *State v. Sherwood* (15 Minn. 221), II, 116.

2. **To governor of State.** A court has jurisdiction to compel the governor of the State to cause a bill which has become a law by reason of his failure to return it with his objections to the legislature within the prescribed time, to be authenticated as a statute. 1870. *Harpending v. Haight* (89 Cal. 189), II, 482.

3. — A mandamus will not be issued to compel the governor of a State to perform an act required by law to be done by him; *e. g.* to execute and deliver bonds as directed by an act of the legislature. 1870. *State v. Warmoth* (23 La. An. 1), II, 712.

4. — A writ of mandamus is not issuable from the Supreme Court to the governor of the State, to direct him, as commander-in-chief, to perform a duty which is properly within the sphere of his duties as commander-in-chief, though the same is imposed upon him by a statute of the State. 1865. *Mauran v. Smith* (8 R. I. 192), V, 564, and *note*, 572.

5. In case of a private corporation, a mandamus may issue on its petition against persons claiming to hold its offices. 1869. *American Railway Prop Co. v. Haen* (101 Mass. 398), III, 377.

6. To board of canvassers. The board of canvassers of general elections in Florida met to perform the duties of their office on the day appointed by law, but were restrained from acting by an injunction. Returns from all the counties had not at that time been received. The board again met pursuant to adjournment, and proceeded to certify and declare the result of the election, as the same appeared from the returns received at the time of their first meeting, notwithstanding that returns from all the counties had been received before the completion of the canvass. The board then adjourned *sine die*. *Held*, that the supreme court has power to issue a writ of mandamus, requiring the board to re-assemble and make a complete canvass of all the returns in their possession. 1871. *Florida v. Gibbs* (13 Fla. 55), VII, 233.

7. A mandamus will lie compelling trustees to admit colored persons to the public schools, where separate schools are not provided for such persons. 1872. *State v. Duffy* (7 Nev. 343), VIII, 713.

See CARRIER; REMOVAL OF CAUSE; TROVER.

MANSLAUGHTER— *See* CRIMINAL LAW.

MARITIME LAW— *See* SHIP AND SHIPPING.

MARINE INSURANCE— *See* INSURANCE.

MARRIAGE.

I. CONTRACT OF MARRIAGE.

1. *Generally.*
2. *Action for breach of.*

II. RIGHTS AND LIABILITIES OF HUSBAND.

III. RIGHTS AND LIABILITIES OF WIFE.

IV. CONTRACTS AND CONVEYANCES.

V. DIVORCE.

VI. DOWER.

I. CONTRACT OF MARRIAGE.

1. *Generally.*

1. A marriage between slaves, void at the time, is made valid by ratification of the parties after they become free, and their children have heritable blood. 1872. *Jones v. Jones* (36 Md. 447), XI, 505.

2. Marriages between whites and blacks. By a law of Indiana, intermarriage between white persons and negroes is made a felony. Upon a prosecution for violation of this law, *held*, that the regulation of the marriage contract is under the control of the State governments, and that the statute in question was not abrogated by the act of congress known as the civil rights bill, or by the fourteenth amendment of the Federal constitution. 1871. *State v. Gibson* (36 Ind. 389), X, 42.

3. **Special act declaring persons married is unconstitutional.** When, by general statutes, the guilty divorced party is prohibited from marrying again without leave of court, and he marries again without such leave, believing he has a right so to do, the subsequent marriage is invalid. A special act of the legislature declaring the two persons so married "to be husband and wife to all legal intent and purposes," is unconstitutional. 1870. *White v. White* (105 Mass. 325), VII, 526, and *note*, 528.

4. **A wife is not a "relation" within the meaning of a statute which provides that "where a devise of real or personal estate is made to a child or other relation of the testator, and the devisee dies before the testator, leaving issue who survive the testator, such issue shall take the estate so devised in the same manner as the devisee would have done had he survived the testator."** 1869. *Esty v. Clark* (101 Mass. 36), III, 320.

5. **The defendant, as bailee, held property of plaintiff's under instructions not to deliver it to any one without plaintiff's written order.** Defendant delivered the property to plaintiff's wife upon an order which proved to be a forgery. *Held*, that the defendant was liable for the value of the property, notwithstanding the fact that the defendant could maintain an action against both the husband and wife for the wrongful act of the latter. 1872. *Kowing v. Manley* (49 N. Y. 192), X, 846.

6. **Testimony of husband and wife.** The testimony of a husband which may tend to criminate his wife, or the testimony of a wife which may tend to criminate her husband, is admissible in a collateral proceeding, provided that no use can afterward accrue therefrom in any direct proceeding against either of them. But a husband or wife objecting to give such testimony will be entitled to the protection of the court. 1869. *State v. Briggs* (9 R. I. 361), XI, 270.

7. — When husband and wife are by statute excluded as witnesses "for or against each other," in an action against them for slanderous words spoken by the wife, she is a competent witness in her own behalf, and he is a competent witness in his own behalf. 1870. *Moulter v. Harding* (38 Ind. 176), V, 195.

2. Action for breach of.

8. **When right of action accrues.** The plaintiff and defendant entered into a contract to marry "in the fall." In October the defendant expressly refused to marry the plaintiff at any time. *Held*, that an action for breach of the contract commenced on the 25th of October, was not prematurely brought. 1870. *Burtis v. Thompson* (42 N. Y. 246), I, 516.

9. — One who contracts to marry at a future day, and, before that day arrives, refuses to perform the contract at any time, is instantly liable to an action for breach of promise to marry. 1871. *Holloway v. Griffith* (33 Iowa, 409), VII, 208, and *note*, 218.

10. **A contract by a married man with a single woman to marry her, if entered into by her in ignorance of his condition, is valid on her part, and she may maintain an action for a breach thereof.** But if, after learning his condi-

tion, she freely, and uninfluenced by fraudulent representations, consents to the continuance of the contract, the jury may consider that fact in mitigation of damages. 1870. *Cover v. Davenport* (1 Heiskell, 868), II, 706.

11. — In an action by a woman for breach of a promise of marriage, *held*, that the action could be maintained although the defendant was married at the time of the promise, if the plaintiff was ignorant thereof. 1871. *Kelly v. Riley* (106 Mass. 339), VIII, 336.

12. **Evidence.** In an action for breach of an oral contract of marriage, it appeared that plaintiff had been in possession of all the correspondence between the parties, and had destroyed or refused to produce a portion of it. *Held*, (1) that plaintiff might, notwithstanding, give, in evidence, any letters of defendant containing admissions of the existence of the contract, and of its breach by him, and (2) that plaintiff might give in evidence a letter replying to one which was destroyed or not produced. 1870. *Stone v. Sanborn* (104 Mass. 319), VI, 288.

13. **Damages.** When the defendant, in an action for a breach of promise to marry, attempts to justify his breach by alleging in his answer, as the cause of his desertion, that plaintiff has had criminal intercourse with various persons, and fails to prove the allegation, the jury have the right to take this circumstance into consideration in aggravation of the damages to which the plaintiff may be entitled. 1870. *Thorn v. Knapp* (42 N. Y. 474), I, 561.

14. — Where there is evidence, in an action for breach of promise of marriage, sufficient to establish the promise, the breach thereof, and the seduction of the plaintiff by the defendant subsequent to the promise, and also evidence tending to show that the seduction was procured by means of the promise to marry, the jury may consider the fact of the seduction as an aggravation of damages. 1870. *Sauer v. Schulenberg* (38 Md. 288), III, 174.

15. — In an action for breach of promise of marriage, evidence that plaintiff was seduced by defendant under promise of marriage, is admissible in aggravation of damages. 1871. *Kelly v. Riley* (106 Mass. 339), VIII, 336.

16. — In an action for damages for breach of promise to marry, evidence that, since the commencement of the action, the plaintiff has made declarations to the effect that she had no affection for defendant, and would not think of marrying him but for his property, is not admissible on the part of the defendant in mitigation of damages. 1872. *Miller v. Hays* (34 Iowa, 496), XI, 154.

II. RIGHTS AND LIABILITIES OF HUSBAND.

17. **Liability of husband for wife's debts.** A married woman, engaged in business on her own account, purchased goods on credit, to be used in that business, the husband having no connection with the business, nor in any way participating in the profits therefrom. In an action against the husband for the value of the goods, *held*, that, in the absence of proof that the husband had assented to his wife's conducting the business, he was not liable for the debt. 1870. *Tuttle v. Hoag* (46 Mo. 38), II, 481.

18. — C. married M., a female guardian, who continued to exercise her guardianship after the marriage. Subsequently she obtained a divorce *a vinculo*. *Held*, that he was not relieved by the divorce from liability for her debts under the guardianship contracted before and during coverture. 1870. *Allen v. McCullough* (2 Heisk. 174), V, 27.

19. For fees of wife's attorney. Plaintiff, who had been attorney for defendant's wife, in a suit brought against her for divorce on the ground of adultery, and which was "dismissed without prejudice," brought an action against her husband for professional services. *Held*, that he was not entitled to recover. 1870. *Ray v. Adden* (50 N. H. 83), IX, 175.

20. — A husband prosecuted, unsuccessfully, his wife, to compel her to find sureties to keep the peace. *Held*, that he was liable as for necessities for the fees of the attorneys employed by her to defend such prosecution. 1871. *Warner v. Heiden* (28 Wis. 517), IX, 515.

21. A man has no right to beat or strike his wife even if she is drunk or insolent, and if he do so, and she die from such beating, he will be guilty of manslaughter, at least. 1871. *Commonwealth v. McAfee* (106 Mass. 458), XI, 888.

III. RIGHTS AND LIABILITIES OF WIFE.

22. A married woman may sue in her own name under the statutes of New York, for injuries to her paraphernalia given to her by her husband. 1872. *Rawson v. The Pennsylvania Railroad Co.* (48 N. Y. 212), VIII, 548.

23. — A married woman may maintain an action in her own name, for personal injuries, under a statute providing that "all property * * which any married woman, during coverture, acquires * * shall be and remain her sole and separate property" on the ground that such a right of action is her "separate property;" but if the action is commenced by the husband and wife jointly, an agreement made by him, with her consent, to withdraw the suit, for a specified sum, will be binding on her and bar a subsequent separate action by her. 1869. *Chicago, Burlington, etc., R. R. Co. v. Dunn* (52 Ill. 260), IV, 606.

24. A judgment in favor of a wife against her husband, rendered by default in a court of law, is valid. 1870. *Simmons v. Thomas* (48 Miss. 81), V, 470.

25. Judgment against, on promissory note. In an action against a married woman upon a promissory note indorsed by her and made a charge upon her separate estate, an ordinary pecuniary judgment, as upon a personal contract, is proper. 1870. *Corn Exchange Ins. Co. v. Babcock* (42 N. Y. 618), I, 601.

26. Limit of recovery. A married woman, in an action to recover damages for personal injuries, caused by the wrongful act of another, can only recover for the direct injury, unless she is engaged in carrying on business, trade or labor, upon her sole and separate account, in pursuance of a statute permitting her so to do. 1872. *Filer v. N. Y. C. R. R. Co.* (49 N. Y. 47), X, 827.

27. Power as to separate estate. A *feme covert* is absolutely a *feme sole* with respect to her separate estate, when she is not specially restrained by the instrument under which she acts, to some particular mode of disposition; and

although a particular mode of disposition is pointed out, it will not preclude her from adopting any other mode of disposition, unless there are words restraining her power of disposition to the very mode pointed out. 1870. *Kimm v. Weippert* (46 Mo. 532), II, 541.

28. — A married woman may charge her separate estate to the extent that the liabilities may be incurred for the benefit of such estate, or for her own benefit, upon the faith of her separate property. Such power is incident to the unqualified ownership of property, and is only limited by the terms of the instrument creating the estate, or by implication arising therefrom. 1870. *Phillips v. Graves* (22 Ohio St. 371), V, 675, and *note*, 686.

29. *Liability for goods purchased by her.* Where a married woman purchases goods for herself in her own name and on her own credit, the law will presume that she intends to charge her separate estate, although the goods may be necessities which the husband is bound to furnish, and although the agreement is verbal. 1871. *Miller v. Brown* (47 Mo. 504), IV, 845.

30. *Promissory note — when charge on separate estate.* Where a married woman, possessed of separate real estate, indorsed notes as surety for her husband, without consideration and without benefit to her separate estate, which indorsement purported, in terms, to charge her separate estate with payment, — *Held*, (1) that such indorsement was a sufficient charge upon her separate estate; (2) that an action on such indorsements, the complaint in which sets forth, in addition to the ordinary allegations, the coverture of the defendant, a separate estate in her, and her intent to charge such estate, is maintainable; (3) in order to make the indorsement of a married woman a charge upon her separate estate, all that is necessary is her declaration in the contract of indorsement or instrument creating the charge of her intent so to charge her separate estate. The charge need not be in such form as to create a specific lien. 1870. *The Corn Exchange Ins. Co. v. Babcock* (42 N. Y. 613), I, 601.

31. — A married woman, having separate property, joined with her husband in a note for the purchase price of real estate purchased by the husband. To secure the payment thereof a deed of trust of the same real estate was executed by both husband and wife. Default being made in the payment, the land was sold, and suit brought to make good the deficiency out of the wife's separate estate. *Held*, that the note was not a charge on the wife's estate. 1870. *Kimm v. Weippert* (46 Mo. 532), II, 541.

32. — A corporation of Louisiana, authorized by its charter to lend money to the "agricultural interest, on notes and mortgages," and to make such contracts with married women, and to enforce the same against their property, brought an action on such a contract made in that State, against a married woman in another State, where she lived, and by the laws of which she was not personally liable on her contracts. *Held*, that the action could not be maintained. 1872. *Bank v. Williams* (46 Miss. 618), XII, 319.

33. — A married woman gave a promissory note in payment of her husband's debts, without, in terms, making it a charge upon her separate estate. *Held*, that an action could be maintained against her on said note and her separate

estate applied in payment of the same. 1871. *Deering v. Boyle* (8 Kans. 535), XII, 480.

34. **Evidence of intent to charge separate estate.** A married woman having separate estate, joined with her husband in a note for the purchase price of real estate purchased by the husband. *Held*, that parol evidence was not admissible to prove the intent of the wife to charge her separate estate. 1870. *Kimm v. Weippert* (46 Mo. 532), II, 541.

35. — The intention of a married woman to charge her separate estate, at the time her liability was incurred, may be either expressed or implied. Such intention may be implied from the fact that she executed a note, bond or other obligation for the indebtedness; and courts of equity will enforce the payment of such obligation against her separate estate, first, by subjecting her personal property; second, by sequestering the rents and profits of the realty, and, third, by sale of the realty when the same is necessary. 1870. *Phillips v. Graves* (23 Ohio St. 371), V, 675.

36. **Promise after termination of coverture.** In an action on a bill of exchange, accepted by a married woman in payment for property purchased by her, the defendant pleaded coverture at the date of the acceptance; replication that defendant, after her husband's death, promised to pay the bill. *Held*, that the replication was bad; the acceptance being void when made, there was no consideration for the subsequent promise. 1872. *Porterfield v. Butler* (47 Miss. 165), XII, 829.

37. **A wife's authority in business matters is special and limited, and when she exceeds that authority her husband is not bound.** 1870. *Goodrich v. Tracy* (43 Vt. 814), V, 281.

38. **Where a married woman insures her realty which she acquired before coverture, the existence of the marriage relation need not be stated in the application for a policy of insurance, which requires a statement of the interest of assured when it is "not an absolute ownership."** Her estate continues to be absolute after marriage, although the husband is entitled to a joint occupancy and a contingency by courtesy. 1869. *Commercial Ins. Co. v. Spanknoble* (52 Ill. 58), IV, 582.

39. **Equitable estate — estoppel.** Real estate, intended for the wife, was conveyed to the husband, the wife paying part of the consideration. *Held*, that an equitable estate *pro tanto* vested in the wife; and that she was not estopped from asserting her estate against one seeking to subject it to the execution of a judgment on a loan made to her husband after the conveyance, on his personal credit, the loan not being induced or influenced by her conduct. 1871. *McGovern v. Knox* (21 Ohio St. 547), VIII, 80.

40. **Liability for acts committed in husband's presence.** On the trial of an indictment against a wife for selling intoxicating liquors, the judge was requested to charge the jury "that if any of the sales were made by the wife in the presence of her husband, she would be presumed to act under the coercion, compulsion or direction of her husband, and would not be liable for such sales." The request was refused. *Held*, correct. 1871. *State v. Cleaves* (59 Me. 298), VIII, 422.

41. — The presumption of law that the wife committed an offense by the coercion of the husband, when he was present, is very slight, and may be rebutted by slight circumstances; and while the first portion of the request was legally correct, the conclusion contained in the last clause that she "would not be liable for such sales" was incorrect. *Ib.*

42. **Liability for goods converted by her.** Where goods are stolen from a shop and sold, by the thief, to a wife, in the absence of her husband, and the wife converted them to her personal use as articles of dress, *held*, that she, as well as the husband, was liable for the goods. 1869. *Heckle v. Lurvey* (101 Mass. 344), III, 366.

43. **Witness to will.** A wife is not a competent witness to a will containing a devise to her husband. 1871. *Sullivan v. Sullivan* (106 Mass. 474), VIII, 356.

44. **Ante-nuptial contract with minor.** Where nothing appears on the face of an ante-nuptial contract necessarily prejudicial to the minor wife, it is voidable only, and, if not disaffirmed by her when she has the capacity so to do, will be binding on her. 1870. *Wilder's Succession* (32 La. An. 219), II, 731.

45. — To ascertain whether such a contract is for the benefit of the minor so as to determine whether it is void or voidable, the *lex loci contractus* alone must be considered. *Ib.*

46. — An ante-nuptial contract was made in the State of Mississippi by a female minor with her intended husband. The contract was to be carried out in Louisiana, where the husband and wife resided after marriage. *Held*, that the capacity of the parties, as well as the form of the contract must be governed by the laws of Mississippi, while its effect must be governed by those of Louisiana. *Ib.*

47. **Post-nuptial contract.** Where there is a marriage between parties in a foreign country, and a post-nuptial contract entered into respecting their property, which contract applies in terms or intent only to present property, and there is a change of domicile, the law of the actual domicile will govern the rights of the parties as to all future acquisitions. 1869. *Fuss v. Fuss* (24 Wia. 256), I, 180.

IV. CONTRACTS AND CONVEYANCES.

48. **Conveyance of lands to husband and wife.** Where land is conveyed to husband and wife each takes an entirety, notwithstanding a statute providing that all conveyances of land made to two or more persons shall be construed to create estates in common and not in joint tenancy. 1868. *Hemingway v. Seales* (42 Miss. 1), II, 586.

49. **An executory contract made by the husband and wife in the statutory mode, for the sale of the wife's separate property, is valid and binding upon her, and may be enforced by a decree of specific performance.** 1871. *Love v. Watkins* (40 Cal. 547), VI, 624.

50. **Deed from husband to wife — consideration.** The duty of a maintenance which the husband owes the wife is sufficient consideration for a voluntary

deed of land made by him to her; and a court of equity will sustain such a conveyance, though void at law. 1870. *Hunt v. Johnson* (44 N. Y. 27), IV, 681.

51. — A married man executed and delivered a deed of real estate directly to his wife, without the intervention of trustees, for a nominal consideration, and it appeared that the rights of creditors were not interfered with by the conveyance in question. *Held*, that the deed, though void at law, would be sustained in equity. 1871. *Sims v. Bickets* (35 Ind. 181), IX, 679.

52. **Sale by husband to wife—delivery.** A husband, for a good consideration, conveyed cattle to his wife by an absolute bill of sale, which he delivered to her. The cattle were at the time upon the husband's farm, where both he and the wife resided. No other delivery of the cattle was made and they remained and were used upon the farm as before. The cattle having afterward been attached on a writ against the husband, *held*, in replevin by the wife, that there was no sufficient delivery of the cattle from the husband to the wife. 1873. *McKee v. Garcelon* (60 Me. 165), XI, 300.

53. **A meritorious consideration** is not sufficient, in equity, to sustain a promissory note given by a husband to his wife, as against his collateral heirs. 1878. *Whitaker v. Whitaker* (52 N. Y. 868), XI, 711.

V. DIVORCE.

54. **Forum—jurisdiction.** It is settled, that the injured party in the marriage relation must seek redress in the forum of the defendant, unless such defendant has removed from what was before the common domicile of both. 1869. *Elder v. Reel* (62 Penn. St. 308), I, 414.

55. — When a court has no jurisdiction, notice, or even process duly served cannot give vitality to the judgment. *Ib.*

56. — A resident of Mexico married a wife in Texas, and took her to his home. She resided with him for two years, when she came to Texas and instituted proceedings for divorce against him for cruel treatment. He appeared and defended. *Held*, that the divorce might be granted, although similar causes might not be ground for divorce in Mexico. 1870. *Shreck v. Shreck* (83 Tex. 578), V, 251.

57. **Effect of decree in other States.** A husband deserted his wife in Ohio, where both parties, up to the time of the desertion, were domiciled, and where she remained. To a petition by the wife for divorce and alimony, the husband set up a decree of divorce obtained by him in Indiana, under proceedings in compliance with the statutes of that State, but in which there was no jurisdiction of the person of the wife except by constructive service, and of which she had no actual notice. *Held*, that her domicile remained unaffected by the desertion of the husband, and that the decree was no defense to her petition for alimony. 1869. *Cox v. Cox* (19 Ohio St. 502), II, 415.

58. — Where a husband and wife were married in Massachusetts, and the husband went to Illinois and filed his bill in equity, and the wife appeared and put in an answer denying the equities of the bill, but afterward, by collusion

a decree of divorce was entered as though no answer had been interposed, the divorce is valid in New York, and the wife is entitled to marry again. 1871. *Kinnier v. Kinnier* (45 N. Y. 535), VI, 132.

59. — Where a person, a resident of this State, went into another State for the purpose of procuring a divorce from his wife, who was, during all the time, a resident of this State, and was never served with process nor appeared in the action, *held*, that the decree so obtained was void, and that the record of the judgment was not conclusive as to jurisdiction. 1871. *Hoffman v. Hoffman* (46 N. Y. 80), VII, 299, and *note*, 302.

60. — To an indictment for bigamy defendant set up a divorce obtained by his first wife in Indiana. The record in the divorce case recited that the parties were residents of Indiana. *Held*, (1) that the evidence was admissible to show that they were not such in fact; (2) that if the parties were not such residents the divorce was void and no defense to the indictment. 1873. *People v. Darvell* (25 Mich. 247), XII, 260, and *note*, 274.

61. *Alimony pending action.* In an action for divorce, brought by one claiming to be a wife, alimony *pendente lite*, and an allowance for expenses, will not be allowed, where marriage in fact is denied by the answer, until the actual existence of the marital relation is proved or admitted. In passing upon the question of a marriage, however, the court is not confined to the allegation of the complaint and the denial of the answer. If the matter contained in other papers, or shown by legitimate proofs, make out, in the judgment of the court, a fair presumption of the fact of marriage, it has the power to grant alimony, pending the action, and expenses of the action. 1872. *Brinkley v. Brinkley* (50 N. Y. 184), X, 460.

62. — For the purposes of an application for temporary alimony, etc., the fact of marriage need not be so conclusively established as is required for obtaining permanent alimony. If the plaintiff makes a reasonably plain case of the existence of a marriage, although it is denied by the defendant, she should be furnished with the means of temporary support and of conducting the suit, until the truth or falsity of her allegations can be ascertained by the truths formally taken in the case. *Ib.*

63. — When the facts undisputed are such as that, from them, a presumption arises that the parties were married, so that the affirmative rests upon the defendant to repel that presumption, the court has jurisdiction and power to grant temporary alimony and expenses, although marriage in fact is denied, and the opposing papers show facts irreconcilable with the existence thereof, or of matrimonial cohabitation. *Ib.*

64. — A denial, in the answer, of an allegation in the complaint that the plaintiff was, at the time of exhibiting her complaint, an actual resident of this State, does not, of itself, take from the court the power of awarding temporary alimony and expenses. Neither will an allegation in the answer that the plaintiff had, before bringing the action, brought another action for the same cause, against the defendant, in a court of another State, which is still pending, have that effect. *Ib.*

65. When may be granted to wife after it has been decreed to husband. Where the husband has already obtained a divorce, the court may, in its discretion, grant a like divorce to the wife for the purpose of making an ancillary decree, securing to her proper portions of the common property. 1870. *Stilphen v. Stilphen* (58 Me. 508), IV, 805.

66. Impotency. When the wife is possessed of an organic defect rendering coition imperfect and conception impossible, which defect existed at the time of the marriage, and is conceded to be permanent, the marriage contract is void *ab initio*, on the ground of impotency, and a deed of separation voluntarily entered into by the husband and wife will not bar a subsequent application by the husband for a divorce *a vinculo* on the ground of such impotency. 1870. *J. G. v. H. G.* (88 Md. 401), III, 183.

67. Desertion. The fact that a husband has for more than five years intentionally abandoned all matrimonial intercourse with his wife, against her consent, and has refused her his companionship and the protection of his home, is sufficient to entitle her to a divorce for desertion, notwithstanding the husband has from time to time contributed to her support. 1870. *Magrath v. Magrath* (108 Mass. 577), IV, 579.

68. Decree may be vacated for fraud. A man obtained a divorce from his wife, at a former term of the court, by false testimony, on a libel of which she had no actual notice, knowledge of which he fraudulently kept from her and of which the court had only apparent jurisdiction founded on his false allegation of domicile. Held, that the court had power to vacate the decree of divorce. 1871. *Edson v. Edson* (108 Mass. 590), XI, 393.

69. — Courts have the same power over judgments in divorce suits as in other cases, and will vacate and set aside a decree that has been obtained by fraud or imposition. 1871. *Adams v. Adams* (51 N. H. 388), XII, 184.

70. Divorce by special statute. A special statute authorizing a court to decree a divorce between parties named, which, under the general law, the court had no power to do, is unconstitutional, as granting a special exemption from the general laws. 1870. *Simonds v. Simonds* (108 Mass. 572), IV, 576.

71. Writ of supplicavit. Where a person has ground for a divorce *a mensa* because of ill treatment, a writ of supplicavit will not be granted although the petitioner has conscientious scruples against applying for a divorce. 1868. *Adam v. Adam* (100 Mass. 365), I, 111.

VI. DOWER.

72. In mortgaged premises. Where the wife unites with the husband in a mortgage of real estate belonging to him, and the property is sold under a decree of foreclosure, she is entitled to dower in the surplus only after the payment of the mortgage. 1869. *Bank of Commerce v. Owens* (31 Md. 320), I, 60.

73. — Where the purchaser of the equity of redemption redeems the property, the widow is only entitled to dower by contributing her portion of the mortgage debt. *Id.*

74. — The wife's inchoate right of dower, in lands, which were mortgaged at the time her husband became the owner thereof, ceases at the sale of the lands, during the life-time of the husband, under a power in the mortgage, and she is not entitled to a share in the surplus. 1869. *Newhall v. Lynn Five Cents Savings Bank* (101 Mass. 428), III, 387.

75. Where a husband purchased lands, giving his note as security for the purchase price, and afterward, by his sole deed, reconveyed the lands to the vendor as a satisfaction of the notes, *held*, that the wife's right of dower did not attach. 1869. *Huginin v. Cochrane* (51 Ill. 302), II, 308.

76. Inchoate right — nature of. Before the act of 1868-69 of the legislature of North Carolina, a widow was entitled to dower in such lands only as the husband should die seized of. By this act the law of dower was changed so as to give the widow dower in all lands of which the husband was seized during coverture. *Held*, that this act did not prevent a husband, married before the act, from selling lands also owned before the act; and that an agreement to pay the wife a certain sum for her right of dower, on such sale, was void as to creditors, for want of consideration. 1872. *Sutton v. Askew* (66 N. C. 172), VIII, 500.

77. Insane widow. The committee of an insane widow cannot elect for her between a devise in lieu of dower and her dower without sanction of the court. 1870. *Kennedy v. Johnston* (65 Penn. St. 451), III, 650.

78. Release of dower — effect of. If a married woman of sufficient mental capacity, without duress or misrepresentation as to the nature of the instrument, joins in a deed of her husband to release her dower, and suffers it to be delivered to the grantee, she cannot afterward avoid it on the ground that she was induced to execute it by fraud or undue influence of her husband, or of another co-grantor, without showing that the grantee knew of or participated in the fraud. 1871. *White v. Graves* (107 Mass. 325), IX, 38.

79. — A wife, for the purpose of releasing dower, joined in her husband's conveyance, which the grantee failed to record. Afterward a subsequent creditor of the husband recovered judgment against him, and the land so conveyed was sold on execution. *Held*, that, though the prior conveyance was thus avoided, the right of dower was barred. 1870. *Morton v. Noble* (57 Ill. 176), XI, 7.

80. — Dower is not barred by the wife's release executed by joining in her husband's deed which is afterward set aside as fraudulent and void against creditors. 1872. *Malloney v. Horan* (49 N. Y. 111), X, 335.

81. — A deed of premises from a husband and wife to a third party, and a deed of the same premises back to the wife, were set aside as fraudulent as to creditors. *Held*, that the wife's inchoate right of dower was not merged in the greater estate acquired by the last conveyance. *Id.*

82. At common law, adultery was no bar of dower, and, by the statute of Westminster (18 Edw. I, 1, c. 34), elopement or departure by the wife willingly from her husband, as well as adultery, is necessary to make the bar complete. 1869. *Elder v. Reel* (63 Penn. St. 308), I, 414.

83. — J. E., the husband of A. E., after marriage, removed to another State — A. E. not accompanying him. While there, he procured a divorce, on the ground of the adultery of A. E. Subsequently, he became seized of certain real estate in Pennsylvania, to which he returned, and married another woman. A portion of this estate was conveyed by him to J. R., who purchased in good faith and without knowledge of J. E.'s prior marriage — the second wife joining in the conveyance. In the meantime A. E. was living and cohabiting with another man, claiming to be his wife. J. E.'s second wife having died, he became reconciled to A. E., and lived with her. Upon J. E.'s death, A. E. brought action for her dower in the real estate conveyed to J. R. *Held*, that she was entitled to dower, and that she was not estopped from claiming the same by reason of her acts and declarations, which could not have influenced J. R. in the purchase. *Id.*

MASTER AND SERVANT.

I. LIABILITY OF MASTER TO THIRD PERSONS.

II. LIABILITY OF MASTER TO SERVANT.

L. LIABILITY OF MASTER TO THIRD PERSON.

1. The test of a master's responsibility for the act of his servant is, whether the act was done in the prosecution of the master's business; not whether it was done in accordance with the instructions of the master to the servant. When, therefore, the servant, while engaged in the prosecution of the master's business, deviates from his instructions as to the manner of doing it, this does not relieve the master from liability for his acts. 1872. *Coogrove v. Ogden* (49 N. Y. 255), X, 361.

2. For acts done in the course of the employment. A master is liable in a civil action for injuries occasioned by the unlawful act of his servants, done under a mistake of facts, or a mistake of judgment upon the facts, in the course of the business of the master, although the servant in doing the act departed from the instructions of the master. 1871. *Higgins v. Watercloset Turnpike and Railroad Company* (46 N. Y. 28), VII, 298, and *note*, 298.

3. — Where the conductor of defendant's car, under a mistake of facts or of judgment, wrongfully ejected plaintiff from the car, *held*, that the defendants were liable. *Id.*

4. — Defendant was the keeper of a gun store. His servant, a clerk in the store, while engaged, during defendant's absence, in exhibiting a gun to a customer, loaded it, contrary to defendant's orders. In so doing it was accidentally discharged and shot the plaintiff, who was on the opposite side of the street. *Held*, that the defendant was liable for the injuries. 1872. *Garretson v. Duencel* (50 Mo. 104), XI, 405.

5. — In an action against the owner of a horse to recover damages for injuries sustained by reason of the negligent riding thereon by his servant, *held*, that the fact that the servant was, at the time of the injuries, engaged in the general employment of a third person was not a sufficient defense, unless the relation of such third person to the subject-matter of the business in which the servant was at the time engaged was such as to give him exclusive control

of the means and manner of accomplishing it, and exclusive direction of the person employed therefor. 1869. *Kimball v. Cushman* (103 Mass. 194), IV, 538.

6. — The plaintiff, while riding on defendant's horse-car, upon invitation of the driver and as a passenger without hire, was injured, without fault on her part, through the negligence of the driver, in the course of his employment. *Held*, that defendant was liable. 1871. *Wilton v. Middlesex Railroad Co.* (107 Mass. 108), IX, 11.

7. — J. S., the agent of defendants, was traveling for them under no particular orders as to the mode of traveling he should adopt. At W., without disclosing his principals, he hired of plaintiffs, who were livery-stable keepers, a team and buggy. At St. M., while the horses were standing in front of a store in which J. S. was transacting business as agent for defendants, the horses took fright and broke the bridle by which they were hitched, but were caught before any damage was done. The horses were then tied by a halter, which was fastened around the neck of the near horse. J. S. took the broken bridle to a shop to be repaired, and after finishing his business at the store he undertook to lead the team to the shop by the halter around the neck of the near horse. On the way one of the buggy wheels struck a stone, thereby causing some paper boxes to be thrown out of the buggy and frightening the horses, and J. S. not being able to hold them by the halter, they broke away and caused damage to the buggy, harness, and to one of the horses, for which action was brought. *Held*, that J. S. was negligent; and that defendants were responsible for the damage resulting from his negligence. 1871. *Pickens v. Diecker* (21 Ohio St. 212), VIII, 55.

8. For willful misconduct of servant — damages. The plaintiff, a passenger in defendants' railway car, gave up his ticket to a brakeman, who was authorized to demand and receive it. Shortly after the latter approached plaintiff, denied that he had received his ticket, and assaulted and grossly insulted him. In an action against the railway company to recover damages, *held*, that the defendants were liable, and that plaintiff could recover exemplary damages. (TAPLEY, J., dissenting on the question of damages.) 1869. *Goddard v. Grand Trunk Railway Co.* (57 Me. 202), II, 39.

9. — Plaintiff and wife were rightfully seated as passengers in one of the cars of defendant, a common carrier of passengers. By the procurement and order of the conductor, they were forcibly ejected therefrom, and thus received injuries for which action was brought. *Held*, that defendant was liable, notwithstanding the willfulness or wrongful motive of the conductor in doing the act complained of. 1871. *Passenger Railroad Co. v. Young* (21 Ohio St. 518), VIII, 78, and *note*, 80.

10. — Plaintiff was a passenger on the steamboat of defendants, common carriers, when the steward and some of the table waiters wrongfully assaulted and injured him. *Held*, that the defendants were liable. 1870. *Bryant v. Rich* (106 Mass. 180), VIII, 811, and *note*, 816.

11. — A passenger upon defendants' boat was assaulted and injured by an officer of the boat. *Held*, that defendants were liable. 1871. *Sherley v. Billings* (8 Bush. Ky. 147), VIII, 451.

12. — The plaintiff, a passenger on defendants' road, applied to the baggage master to have his trunk checked, which not being promptly done, the plaintiff became angry and used threatening and abusive language, whereupon the baggage master seized a hatchet and struck him. *Held*, that the company was not liable. 1869. *The Little Miami Railroad Co. v. Wetmore* (19 Ohio St. 110), II, 373.

13. — Plaintiff was a passenger in a street car, and, wishing to alight, passed out upon the platform and asked the conductor to stop the car, telling him that she would not get out until the car had come to a full stop; whereupon he, and while the car was in motion, threw her from the car with great violence, breaking her leg. *Held*, a wanton and willful trespass, for which the company was not liable. 1871. *Isaacs v. The Third Avenue Railroad Company* (47 N. Y. 122), VII, 418, and *note*, 423.

14. — The conductor of a street railroad car was authorized by the company to remove every passenger from the car who should refuse to pay the fare. While attempting to remove plaintiff, a passenger, for non-payment of fare, the conductor struck him in the face, for which he brought action against the company. *Held*, that the company was liable, if the jury should find that the act was without malice or ill feeling toward plaintiff. 1872. *Jackson v. The Second Avenue Railroad Company* (47 N. Y. 274), VII, 448.

15. — A was the owner of certain premises, which he leased to B. Subsequently A and his servant, C, attempted to enter upon the premises by force, and, in the conflict which ensued, C shot B, who soon afterward died of the wound. In a civil action by the representatives of B against A to recover, under the statute, damages for the wrongful killing of their intestate, the judge refused to charge that, "If the jury believe that C fired the shot which caused B's death, with the premeditated design to effect his death, A is not liable for his act." *Held*, error. 1871. *Fraser v. Freeman* (43 N. Y. 566), III, 740.

16. For use of unnecessary force. Where the ejection of a passenger from a railroad car is justified by his conduct, but the conductor uses unnecessary force and violence in effecting it, occasioning injury, the company is liable. 1871. *Higgins v. Waterdiet Turnpike, etc., Co.* (46 N. Y. 28), VII, 298.

17. A railroad company employed a contractor to construct, "under the general supervision of the chief engineer of the company," a portion of its road; and the sub-contractors and their employees committed various trespasses and injuries on the lands of plaintiffs. *Held*, that the company, not having directed the acts complained of, nor having any control over the persons who committed them, and the injuries not being the natural result of the work contracted to be done, plaintiff could not recover of the company; notwithstanding the statutes provided that the company should be liable "for trespasses and injuries to lands and buildings adjoining, or in the vicinity of its road, committed by a person in its employ or occasioned by its order." The statutory provision does not embrace the acts of contractors. 1871. *Eaton v. European & Northern Railway Co.* (59 Me. 520), VIII, 480.

18. A municipal corporation is liable for the negligence of its servants in leaving unguarded an excavation in a public street whereby one is injured. 1869. *Oliver v. Worcester* (102 Mass. 489), III, 485.

II. LIABILITY OF MASTER TO SERVANT.

19. For negligence of co-servant. Plaintiff's intestate was employed by defendant—a railroad company—as a common laborer, for the purpose of loading and unloading freight cars. While thus engaged he was ordered by the depot superintendent to couple a freight car with other cars attached to a locomotive; and, having to go between the cars for this purpose, the engine was so carelessly managed that he was crushed to death. The duty of coupling the cars was entirely different from that for which deceased was hired. *Held*, that plaintiff could recover. 1869. *Lalor v. Chicago, Burlington and Quincy R.R. Co.* (52 Ill. 401), IV, 616.

20. — In an action by plaintiff against a railroad company to recover for the death of the intestate, while in the employ of the company, caused by the carelessness of an engine-driver, *held*, that the following instruction contained the rule of law applicable to the case: "If the jury believed, from the evidence, that both the deceased and the engine-driver, at the time deceased was injured, were in the employment of the railroad company, and that their ordinary occupations in such service bore such relations to each other that the careless or negligent conduct of the engine-driver endangered the safety of the deceased, then such danger was incident to the employment of the deceased, and the plaintiff cannot recover." 1870. *Chicago and Alton R. R. Co. v. Murphy* (53 Ill. 336), V, 48.

21. — In an action against a railroad company, by a servant, for injuries received in consequence of the negligence of a fellow servant, an engineer, *held*, that if the company used proper care in selecting a competent engineer they were not responsible for the injury to the fellow servant, who was aware of the subsequent habitual carelessness of the engineer, unless actual knowledge of such carelessness was brought to the officers of the company. 1870. *Davis v. Detroit and Milwaukee R. R. Co.* (20 Mich. 105), IV, 364.

22. — The conductor of a train of cars was injured in consequence of the mismanagement of the locomotive by a fireman who had been placed in charge of the engine by the agents of the company. In an action for damages against the company, *held*, that they were responsible on the ground that they were "negligent or unmindful of their duty in employing competent and skillful servants in the execution of their business, and injury resulted therefrom to a fellow servant." 1871. *Harper v. The Indianapolis and St. Louis R. R. Co.* (47 Mo. 567), IV, 353.

23. — Defendant, a corporation, employed a competent agent, whose duty it was to engage men for its service. The agent hired one W., as foreman, who was competent and skillful at the time, but who subsequently acquired habits of intoxication, which were known both to the agent and to the plaintiff. W., while intoxicated, directed two incompetent men to erect a scaffold, which they did so unskillfully, that, while plaintiff, an employee of defendant, was upon it in the discharge of his duties, it fell, injuring him. In an action to recover damages, *held*, (1) that defendant was chargeable with the negligence of its agent in retaining W. in its employ after knowledge of his incompetency; (2) that it was a question for the jury whether plaintiff was guilty of contributory

negligence in remaining in defendant's service after knowledge of the incompetency of W. 1872. *Laning v. N. Y. Cent. R. R. Co.* (49 N. Y. 521), X, 417.

24. — A master is bound to use due care and diligence in the selection and employment of his agents and servants, and for want of such care and diligence he is responsible to all other servants for any damage that may thence arise. 1872. *Moss v. Pacific R. R. Co.* (49 Mo. 167), VIII, 126.

25. — A minor son of plaintiff was killed while in defendant's employ, and she brought action to recover damages. *Held*, that it was not sufficient for plaintiff to allege a failure merely, on defendant's part, to select competent servants, but she should have charged a want of care and diligence in the selection of defendant's servants; also that the mere allegation that defendant allowed its employees to neglect their duties, and to suffer and cause deceased to be injured, was not sufficient to charge liability on defendant. *Ib.*

26. — The plaintiff, a deck hand on the steamboat A., was injured by the explosion of the boiler of the steamboat R., while the boats were near each other. The defendant was owner of the steamboat A., but had an agreement with the owner of the steamboat R. that each should employ the men and manage his own boat, and at the end of the season the profits of the boats should be divided between them. In an action to recover damages for such injury, *held*, (1) that the defendant and the owners of the R. were partners, and each responsible for the negligence of the officers and crew of each boat; (2) that the plaintiff and the crew of the R. were not fellow-servants within the rule exempting the master from liability for injuries sustained by a fellow-servant. 1870. *Connolly v. Davidson* (15 Minn. 519), II, 154.

27. — *evidence.* In an action by a servant against the master, to recover damages for injuries occasioned by the negligence of a co-servant, *held*, that evidence of particular acts of carelessness and negligence on the part of the co-servant was admissible to show that the master had retained said co-servant in his service after he knew, or ought to have known, that said servant was careless and negligent. 1871. *Pittsburg, Fort Wayne, etc., R. R. Co. v. Ruby* (38 Ind. 294), X, 111.

28. A receiver operating a railroad is answerable in his official capacity for an injury to a servant employed on the railroad by reason of the negligence of the receiver, or the negligence of his agents in a position superior to that of the servant; and in determining the receiver's liability and the servant's right to recover, the same rules are to be observed as would be applicable were the company exercising the same powers of operating the road. 1870. *Mearns' Admr. v. Holbrook* (20 Ohio St. 187), V, 638.

29. For injuries from defective machinery and appliances. The legal implication is, that the employer will adopt suitable instruments and means with which to carry on his business, and where injuries to servants or workmen happen by reason of improper and defective machinery and appliances used in the prosecution of the work, the employer is liable, provided he knew or might have known, by the exercise of reasonable care, that the apparatus was unsafe. 1870. *Gibson v. Pacific R. R. Co.* (46 Mo. 163), II, 497.

30. — An employee of a railway company cannot recover for an injury sustained by reason of an alleged defective brake, unless it is shown that the company was negligent, either in providing the machinery which caused the injury, or in selecting the mechanics whose duty it is to keep it in good order. 1870. *Wonder v. Batimore and Ohio R. R. Co.* (83 Md. 411), III, 148, and note, 147.

31. — Plaintiff was injured, while in the discharge of his duty as brakeman of a freight train, by an awning projecting from a station-house, to the dangerous position of which the attention of the company's agent had been called. In an action against the company, it did not appear that plaintiff knew of the danger. *Held*, that he could recover; but that \$10,000 was excessive damages, the loss of an arm being the extent of the injury. 1869. *Illinois Central R. R. Co. v. Welch* (52 Ill. 183), IV, 593.

32. — A release of all claims arising from the injury, signed by the brakeman, in consideration of a small sum, would be a bar to an action, unless obtained by false representations. *Ib.*

33. — A brakeman on a railroad, in the discharge of his duty, while descending a defective ladder on a freight car, fell, and was crushed by the engine, so that amputation of his legs was necessary. *Held*, that the company was liable unless the brakeman was negligent, or unless he knew, or might have known of the defect in the ladder, which was a question for the jury; but that \$18,000 was excessive damages, because, after deducting expenses, this sum, at interest, would produce, annually, more than the brakeman could have expected to earn, had he not been disabled. 1870. *The Chicago & Northwestern Railway Co. v. Jackson* (55 Ill. 492), VIII, 661.

34. *Where business is dangerous.* The plaintiff was a boy fourteen years old, employed in defendant's factory to tend machinery, and on the second day of his employment, while standing in his proper place, tending a drawing-machine, his left hand was caught in the cogs of a machine standing in dangerous proximity, and badly injured. *Held*, that instructions to the jury embodying the following principles were correct: That, if plaintiff was of sufficient age and intelligence to understand the nature of the risk to which he was exposed, and had reasonable notice of the dangerous nature of the service which he was performing, the defendants were not liable; but that, if the defendants knew or had reason to know the peril to which plaintiff was exposed, and failed to give sufficient or reasonable notice of it, and if plaintiff, without negligence, from inexperience, or reliance upon the directions given him, failed to perceive or appreciate the danger, and was injured in consequence, the defendants were liable. 1869. *Coombs v. New Bedford Cordage Co.* (102 Mass. 572), III, 506.

35. *Burden of proof—presumption of care.* Plaintiff's intestate, a brakeman on a freight train, was killed on defendant's railroad. The accident occurred while deceased was assisting in making what is termed a "flying switch," which is considered extra hazardous. Deceased was seen to stand upon a car for the purpose of uncoupling it while in motion, and immediately afterward his lifeless body was found under the advancing cars.

There was no evidence as to what took place during the interval; but it appeared that the car on which the deceased stood was not supplied with the usual ladder or handle. *Held*, (1) that plaintiff was not bound to raise, by his proof, more than a reasonable presumption of negligence on the part of defendant, and that if it appeared that the brakeman, by the exercise of due care, had from time to time discharged his duty without injury, this might raise a fair presumption against defendant, and it would be for it to show that his negligence or some circumstance which it could not control contributed to or caused the accident; (2) that it was a question for the jury as to how deceased got under the cars, or what caused him to fall, and they might presume care and caution on his part to save himself from harm; (3) "that if the danger or defect was known to the employee, or might have been known by the use of ordinary care, and there was no inducement to remain, by promises to remove, secure or remedy the same, it would seem but reasonable that he assumed the risk and should not recover." 1870. *Greenleaf v. Illinois Central R. R. Co.* (39 Iowa, 14), IV, 181.

36. For injuries received by one while aiding servant. At a station where defendants' train of cars had stopped, the engine, tender and one car ran down to the water-tank in charge of the fireman, who asked a boy ten years old, standing there, to put in the hose and turn on the water. While the boy was climbing upon the tender to comply with the request, some detached cars belonging to the train came down with ordinary force, and struck the car next to the tender, whereby the boy was thrown down and crushed to death. In an action by the parents of the boy, *held*, that the defendants were not liable. 1871. *Flower v. The Pennsylvania R. R. Co.* (69 Penn. St. 210), VIII, 251.

37. — The conductor of a train ordered a boy standing by, and who was not in the employ of the railroad company, to uncouple the cars. The boy refused, but on being threatened by the conductor, uncoupled the cars, and in doing so was injured. *Held*, that the railroad company was not liable. 1878. *New Orleans, etc., R. R. Co. v. Harrison* (48 Miss. 113), XII, 356.

38. Where a minor agreed to work for a certain time and not to leave without giving two weeks' notice, but did leave without giving such notice, *held*, that the damage occasioned the employer could not be deducted from the wages. 1870. *Derocher v. Continental Mills* (58 Me. 217), IV, 286.

See CONSPIRACY ; NUISANCE.

MECHANIC'S LIEN.

State laws giving a lien on vessels for labor performed and materials furnished in their construction are constitutional, and the enforcement of such liens belong to the State tribunals. 1868. *Foster v. The Richard Busteed* (100 Mass. 409), I, 125; *Sheppard v. Steele* (43 N. Y. 53), III, 660.

See BANKRUPTCY ; JURISDICTION.

MERCANTILE AGENCY — See SLANDER AND LIBEL.

MILLS AND MILL OWNERS — See WATER AND WATER-COURSES.

MINES.

By a decree in partition, the surface of an estate containing a coal deposit was severed from the underlying mineral, and the parts were allotted to different heirs without limitation. *Held*, that the mineral-owner was liable to the surface-owner for injury to buildings, etc., upon the surface, caused by not leaving proper supports in mining the coal. In such a case all the coal belongs to the mineral-owner, but the maxim *sic utere tuo ut alienum non laedas* applies. 1871. *Jones v. Wagner* (66 Penn. St. 429), V, 885.

MISTAKE.

1. **Payment under mistake of facts.** Where money is paid by a party under the belief that facts are different from what they actually are, and the party is not in truth bound to pay the money, he is entitled to have the same refunded if duly diligent in giving notice of the mistake. 1869. *Citizens' Bank of Baltimore v. Grafflin* (81 Md. 509), I, 66.

2. **A voluntary payment, with a knowledge of all the facts, cannot be recovered back, although there was no debt; a payment, under a mistake of fact, may.** 1873. *Adams v. Reeves* (68 N. C. 184), XII, 627.

3 If one, knowing that he has no claim upon another, sues out legal process against him and seizes his person or property, and the defendant, acting upon the false representations of the plaintiff, and not being able at the time, by reasonable diligence, to know or to prove that such representations are false, pays the demand, he may recover it back in a subsequent action. *Id.*

4. **In an action for the purchase price of land, where the defendant set up as a defense that the land conveyed was not the land which he intended and agreed to purchase, a charge to the jury, that, if the defendant was negotiating for one thing and the plaintiff was selling another, and their minds did not agree as to the subject-matter of the sale, there would be no contract by which the defendant would be bound, though there was no fraud on the part of the plaintiff, is correct.** 1869. *Kyle v. Kavanagh* (103 Mass. 356), IV, 500.

MORTGAGES.

I. OF REAL ESTATE.

II. OF PERSONAL PROPERTY.

I. OF REAL ESTATE.

1. **Parol evidence.** Where a mortgage is given for a specified sum, it is competent to prove by parol evidence that it was given to indemnify the mortgagee for becoming security for the mortgagor on a note. 1870. *Kimball v. Myers* (21 Mich. 276), IV, 487.

2. **When deed absolute is mortgage — parol evidence.** Plaintiff bought land with money borrowed from the defendant, and then conveyed it to defendant by deed absolute; but both parties understood that the conveyance was intended

as security for the loan. *Held*, that on parol proof of these facts plaintiff was entitled to maintain a bill in equity to redeem the land as from a mortgage. 1872. *Campbell v. Dearborn* (109 Mass. 180), XII, 871.

3. — A deed absolute on its face but made to secure the payment of money is in effect a mortgage. 1870. *Klink v. Price* (4 W. Va. 4), VI, 268.

4. A mortgage does not convey the legal title, and a defendant in ejectment cannot set up a mortgage with which he is not connected as an outstanding title. 1870. *Woods v. Hilderbrand* (46 Mo. 384), II, 518.

5. A mortgage is not within the clause of a fire policy prohibiting, without consent, any change in the title or possession of the property, whether by sale, voluntary transfer or conveyance. 1870. *Hartford Fire Ins. Co. v. Walsh* (54 Ill. 164), V, 115.

6. Action by mortgagee. A mortgagee without possession or right of possession cannot maintain an action of trespass *quare clausum fregit*, against a stranger for breaking and entering the mortgaged premises. 1869. *Gooding v. Shea* (103 Mass. 360), IV, 568.

7. — A second or third mortgagee, though not in possession, nor having the right of possession, may maintain an action against a stranger to recover the value of fixtures by him removed from the mortgaged premises, without regard to the sufficiency of his security, and although the mortgagor had sued defendant for the same act. *Id.*

8. Assumption by mortgagee of prior mortgage. A deed, which was in equity a mortgage, contained a stipulation whereby the mortgagee assumed and agreed to pay a prior mortgage. *Held*, that after the cancellation and discharge of the second mortgage, the prior mortgagee could not enforce the stipulation against the second mortgagee. 1873. *Garnsey v. Rogers* (47 N. Y. 283), VII, 440.

9. Notice to mortgagee of tax sale. The mortgagee, being the legal owner of the land mortgaged, is the person to whom notice must be given by the sheriff of a levy and sale of such land for unpaid taxes. 1878. *Whitehurst v. Gaskill* (69 N. C. 449), XII, 655.

10. Release of part of mortgaged premises. A mortgage upon several lots is a common burden, and if the mortgagee, with knowledge that the mortgagor has aliened a portion of the lots, releases one of the other mortgaged lots, he thereby discharges the aliened lots to the extent of the *pro rata* value of the portion released. 1869. *Taylor v. Short* (27 Iowa, 361), I, 280.

11. — But if the mortgagee could show that the mortgage was no lien on the released part, and that the owners of the other portion sustained no injury by such release, it would be otherwise. *Id.*

12. Merger — unrecorded assignment — priority of liens. J. M. gave a mortgage on real estate to M. M., who, on the same day, duly assigned it to plaintiff. Subsequently, and after maturity of the mortgage, J. M. conveyed in fee the same premises to M. M., the mortgagee. M. M. thereafter conveyed the premises to the defendant. The mortgage was duly recorded soon after its date. The assignment and the deed from J. M. to M. M. were not recorded

until after the date of the conveyance to the defendant. Nor was the assignment recorded until after defendant's deed. In an action to foreclose the mortgage, *held*, (1) that the conveyance of the mortgaged premises to the mortgagee did not merge the mortgage; (2) that the defendant was not entitled to protection as a *bona fide* purchaser without notice of the assignment; and (3) that the lien of the plaintiff's mortgage was not invalidated by reason of his neglect to have the assignment recorded until after the recording of the deed to the defendant. 1870. *Purdy v. Huntington* (42 N. Y. 334), I, 532.

13. Where property has been leased subsequent to the execution of a mortgage thereon, the mortgagee on entry for condition broken may treat the tenant as a trespasser and bring ejectment even without notice: but if the mortgagee receives rent from the tenant the relation of landlord and tenant will be created between them, but the tenancy will only be from year to year. 1871. *Gartside v. Outley* (58 Ill. 210), XI, 59.

14. Lessee of mortgaged premises holding over by virtue of mortgage. L. sold his premises to S., but remained in possession, under a lease from S., to expire on the 1st of April following, and took a mortgage on the premises from S., conditioned for the payment of \$4,000 purchase-money on or before the 1st of April, being the date of the expiration of the lease. At the expiration of the lease L. held over by virtue of the mortgage, payment of which was not tendered until after the time named, and then refused. *Held*, that a formal entry under the mortgage was not essential; that the unaccepted tender, after the time named for payment, did not terminate the estate of L. under the mortgage, nor extinguish the lien thereof; and that L. could not be ejected. 1869. *Shields v. Loxear* (84 N. J. 496), III, 256.

15. Of railroad. A railroad company authorized by their charter to mortgage "all or any part of their road, property, rights," etc., executed and delivered a mortgage of "all the road, property, rights," etc., "now held or hereafter to be acquired." *Held* valid as to subsequently acquired property. 1870. *Philadelphia, Wilmington & Baltimore R. R. Co. v. Woolpper* (64 Penn. St. 366), III, 596.

II. OF PERSONAL PROPERTY.

16. Possession by mortgagor with power to sell. A mortgage of goods containing a provision allowing the mortgagor to retain possession of them, and to sell them "in the usual retail way," but requiring him to "pay over the money received therefor to the mortgagee as the goods are sold," is, upon its face, a valid mortgage. BRINKERHOFF, Ch. J., and WELCH, J., dissented. 1870. *Kleine v. Katzenberger* (20 Ohio St. 110), V, 630.

17. A mortgage by a buggy-maker of "ten new buggies," without delivery of possession, he having more than ten on hand at the time, *held*, ineffectual to pass title to any particular buggies or to any interest in the buggies on hand; and the mortgagee cannot maintain an action for the recovery of ten new buggies in the possession of the mortgagor, or his personal representative. 1872. *Blakely v. Patrick* (67 N. C. 40), XII, 600.

18. Sale of mortgaged property — conversion. A mortgagor of chattels in possession has a right before default to sell and deliver the mortgaged property

subject to the mortgage, and if the purchaser dispose of it again before default in payment, and before demand of possession, he will not be liable for conversion. 1870. *Hathaway v. Brayman* (42 N. Y. 322), I, 524.

19. — A chattel mortgage contained a condition that if, at any time, the mortgagee should feel himself "unsafe" or "insecure," he might take immediate possession of the property wherever it could be found. The mortgagor, without the knowledge or consent of the mortgagee, sold the property to an innocent vendee. In an action by the mortgagee against the vendee to recover the property, *held*, (1) that trover would lie; (2) that the mortgagee need not prove, as a condition precedent to his recovery, that other property covered by the mortgage was insufficient to satisfy the debt, or that he had been unable to reduce such other property to possession; and (3) that the question, whether the mortgage was duly acknowledged and recorded, should not be submitted to the jury. LAWRENCE, Ch. J., McALLISTER and THORNTON, JJ., dissented. 1870. *Bailey v. Godfrey* (54 Ill. 507), V, 157; see *Hathaway v. Brayman*, *supra*.

20. **Discharge in bankruptcy.** The defendant gave the plaintiff a mortgage on his household furniture, and afterward filed his petition for discharge in bankruptcy. Under an agreement between the creditors and the mortgagee, that portion of the furniture exempt by law from the operation of the bankrupt act was separated from the rest, and duly set off to the bankrupt by the assignee. The mortgage was declared fraudulent as against creditors, and the proceeds of the furniture not exempt were realized by the assignee. The mortgagee never proved his debt in the bankruptcy proceedings, and the bankrupt was discharged. *Held*, that the discharge did not affect the mortgagee's right to hold the property thus set off, and that he might replevy it. 1870. *Tuesley v. Robinson* (108 Mass. 558), IV, 575.

See BANKRUPTCY; INSURANCE; PRE-EMPTION; RAILROADS; USURY.

MUNICIPAL CORPORATIONS.

- I. GENERAL AND MISCELLANEOUS PRINCIPLES.
- II. BY-LAWS AND ORDINANCES.
- III. RIGHTS AND LIABILITIES.
 1. *As to streets and highways.*
 2. *Sewers.*
 3. *Fire department.*
- IV. ASSESSMENTS FOR LOCAL IMPROVEMENTS.
- V. MUNICIPAL AID TO RAILROADS.

I. GENERAL AND MISCELLANEOUS PRINCIPLES.

1. **Acts creating municipal corporations** are public acts, of which courts will take notice without proof. 1871. *Prell v. McDonald* (7 Kans. 426), XII, 423.

2. **The acceptance of a special charter** by a municipal corporation, authorizing it to perform a strictly governmental duty, does not create a contract between the corporation and the State that it shall be performed, nor make the corporation liable for an omission to perform, or a negligent performance of it. 1871. *Hewison v. City of New Haven* (37 Conn. 475), IX, 342.

3. **The legislature has no power to compel a municipal corporation to incur a debt for local improvements, without its consent.** 1869. *People v. Mayor, etc., of Chicago* (51 Ill. 17), II, 278.

4. **Lighting highways.** Cities and towns are under no obligation to light highways at night. 1871. *Randall v. Eastern Railroad Co.* (106 Mass. 276), VIII, 327.

5. **Nuisance.** A town council has no power to order the demolition of a building as a nuisance, where the nuisance is not caused by the erection but by the persons who resort thither. 1869. *Miller v. Burck* (32 Tex. 208), V, 242.

6. **Draining land.** Where a municipal corporation is proceeding to drain its lands by the construction of artificial channels in the direction of land adjoining the corporation, to the permanent injury of such adjoining land, the owner thereof may restrain the construction of such channels by injunction. 1870. *Pettigrew v. Boansville* (25 Wis. 223), III, 50.

7. — A municipal corporation can acquire the right to turn a stream of water upon the lands of another, to the injury thereof, only by an exercise of the power of eminent domain. *Id.*

8. **Wharves.** The charter of a city authorized it to establish wharves and public landings, to fix the rate of wharfage and to regulate the anchorage and mooring of all boats within the city. *Held*, that the city had the power to forbid a person owning a lot abutting upon a river, and upon which no wharf or public landing had been established, to use such lot as a wharf or landing without permission of the city and the payment of wharfage. 1871. *City of Dubuque v. Stout* (32 Iowa, 80), VII, 171.

9. **Markets — contract against public policy.** The plaintiff contracted with the authorities of a village to build a market-house, and to put it under their control for ten years, in consideration that they would pay over the rents thereof to him, appoint a person to superintend it, permit no other market-house to be erected or used, nor certain articles specified to be sold elsewhere in the village during the said ten years. In an action for breach of contract, *held*, that the said contract was against public policy and void. 1871. *Gale v. The Village of Kalamazoo* (23 Mich. 344), IX, 80.

10. **When a town is divided and a new town created out of a part of the territory, the latter is not bound to contribute toward the payment of debts contracted before the division, in the absence of any statute to that effect.** 1872. *Town of Deperre v. Town of Bellevue* (81 Wis. 120), XI, 603, and *note*, 604.

11. **Public squares.** A city holds title to its public squares *in trust* for the public, and they are not liable to sale on executions against the corporation for its general indebtedness. 1870. *Ransom v. Bond* (29 Iowa, 68), IV, 195.

12. — By an exercise of the right of eminent domain, the legislature may confer upon a city the power to acquire absolute title to land for a public park, on compensation made to the owners, but the city holding the land in trust for the public cannot convey it without legislative sanction; and an act of the legislature authorizing such conveyance is valid, unless it operates to divest the lien of bonds for the payment of which the land is pledged, in which

case it is unconstitutional and void as impairing the obligation of contracts. 1871. *The Brooklyn Park Commissioners v. Armstrong* (45 N. Y. 284), VI, 70.

13. A statute prohibited the use in cities and towns of a certain size, of any building not then so in use, for carrying on the "business of slaughtering cattle, sheep, or other animals, or for melting or rendering establishments, or for other noxious and offensive trades or occupations," without the permission of the mayor, etc. *Held*, a constitutional exercise of the police power of the legislature. 1872. *Inhabitants of Watertown v. Mayo* (109 Mass. 815), XII, 694.

14. Effect of act appropriating lands to public use — what is "public use" — railroads. By the act of congress laying off the city of Burlington it was provided "that a quantity of land, of proper width, on the river bank, at the town of Burlington, and running with the said river the whole length of said town, shall be reserved from sale for public use, and remain forever for public use as a public highway, and for other public uses." *Held*, (1) that the effect of this act was to restrict the power of absolute disposition by the government, and the city took the land subject to the trusts and conditions expressed in the act; (2) that the natural accretions from the river to the reserved strip partook of the same nature as the original reservation, and was held by the same tenure and subject to the same use and conditions; (3) that the owners of lots abutting on this reservation did not, by their purchase, acquire the title to it, but that they acquired such rights as would enable them to enjoin a diversion of it to uses and purposes foreign to and inconsistent with the act of congress; and (4) that the construction of a railway upon a reservation would be a "public use" within the meaning of the act, but that the city had no right to make an unqualified disposition of it to a railway company to be held and used as its private property, although it might lawfully convey the right of way to a railway company. 1870. *Cook v. The City of Burlington* (30 Iowa, 94), VI, 649.

15. An act requiring the taxation of a town to pay for a bounty to a volunteer and the expense of unsuccessful suits to recover the same is not for a municipal purpose and is void. 1872. *State v. Tappan* (29 Wis. 664), IX, 622.

16. — The legislature cannot constitutionally authorize a town to loan its credit to persons who will, in consideration thereof, maintain a manufacturing enterprise in the town for their own private emolument. 1872. *Allen v. Inhabitants of Jay* (60 Me. 124), XI, 185.

II. BY-LAWS AND ORDINANCES.

17. Intoxicating liquors. An ordinance of a town declaring a nuisance all intoxicating liquors kept within the limits of the town for the purpose of being sold or given away as a beverage to be drunk within said town, and directing the police officers to abate said nuisance by removing the liquors beyond the town limits, will not justify such officers in seizing and carrying away liquors until it has been determined by a court of justice that the ordinance has been violated. 1869. *Dorst v. People* (51 Ill. 286), II, 801.

18. — A city ordinance for regulating the sale of intoxicating liquors provided that druggists might sell such liquors for certain purposes, but required

them, under a heavy penalty, to furnish a quarter-yearly statement verified by their own and their clerks' and servants' affidavits, showing the kind and quantity of liquor sold, when and to whom sold, etc. In a prosecution under this ordinance to recover the penalty for failing to furnish the statement, *held*, that the city council had no power to pass the ordinance; that it was unreasonable and oppressive and an invasion of the sanctity of private business. 1871. *City of Clinton v. Phillips* (58 Ill. 102), XI, 53, and *note*, 54.

19. Regulating the erection of buildings. A municipal corporation was authorized by its charter to make by-laws regulating the erection of buildings. *Held*, that a by-law requiring a building license and imposing a licensee fee was valid. 1872. *Welch v. Hotchkiss* (39 Conn. 140), XII, 383.

20. Fire limits. Plaintiff declared against the corporation of Atlanta, alleging that it had by ordinance defined fire limits in the city within which the erection of wooden buildings were prohibited. That while the ordinance was in force the city council authorized F. to erect a wooden building in the said limits, which taking fire caused the destruction of plaintiff's building. *Held*, on demurrer, that the action could not be maintained. 1872. *Forsyth v. Mayor* (45 Ga. 152), XII, 576.

21. Obstruction of street cars. Where a city ordinance gave to the street cars of the city precedence over all other vehicles, persons or things upon the railroad track, and provided that "if any person shall unnecessarily obstruct or impede the running of the cars on such track," he shall be liable to a fine for such offense, *held*, that any obstruction or impediment to the free and unrestricted use of the track, not the result of necessity, for any length of time, however short, was an offense under the ordinance. 1871. *State v. Foley* (31 Iowa, 527), VII, 166.

22. Unreasonable restraint of trade—arrest under void ordinance. A village charter empowered the trustees to enact and enforce ordinances "for the government and good order of the village, for the suppression of vice, for the benefit of trade and commerce and for the good health thereof." The trustees enacted an ordinance prohibiting the sale, without license, at temporary stands or tables, "of any lemonade," etc. Plaintiff was arrested for a violation of the ordinance. *Held*, that the ordinance was void, as an unreasonable restraint of trade, and afforded no justification for the arrest. 1871. *Barling v. West* (29 Wis. 307), IX, 576.

23. Regulating vehicles. A city was authorized by its charter to provide by ordinance for "licensing, taxing and regulating hacks, drays, wagons and other vehicles, used within the city for pay." *Held*, that an ordinance, licensing and taxing vehicles used in hauling into and out of the city was void, as not being authorized by the charter, and, *semble*, that the legislature could give no authority to pass such an ordinance. 1872. *City of St. Charles v. Nolle* (51 Mo. 122), XI, 440.

24. Regulating bridges. A city, authorized by its charter to build and regulate bridges over a navigable river flowing through it, provided, by ordinance, that the draws of the bridges should be closed every ten minutes, if necessary for the passage of persons and teams, and that any person navigating the river

who should attempt to pass any bridge, or should approach so near as to occasion injury, while the draw was so closed, should be subject to a penalty prescribed. *Held*, that the ordinance was reasonable and valid. 1889. *Chicago v. McGinn* (51 Ill. 266), II, 295.

III. RIGHTS AND LIABILITIES.

1. *As to streets and highways.*

25. Neither a county nor a town is liable to a private action for injuries occasioned by reason of the neglect of its officers to keep a bridge in repair. 1871. *White v. County of Bond* (58 Ill. 297), XI, 65; *Town of Waltham v. Kemper* (55 Ill. 346), VIII, 652.

26. A city is not liable in a private action to an injured person for neglect to keep a crosswalk in repair. 1870. *Detroit v. Blakeby* (31 Mich. 84), IV, 450.

27. It is the duty of a city not only to keep its streets in repair, but to erect barriers and protections to prevent travelers from passing without its limits, but, in its general directions, into dangers and obstructions. *Per BECK, J.* 1870. *Manderschid v. City of Dubuque* (29 Iowa, 73), IV, 196.

28. — In an action against a city to recover for personal injuries, it appeared that the plaintiff, while walking across a public common upon a foot-path which had been prepared and cared for by the city, and used by the public for more than twenty years, fell into a deep excavation made by the direction of the city in the course of repairing a building used and rented by the city, standing within the common. The excavation was carelessly left unguarded by the servants of the city employed in the work of repairing the building. *Held*, that the city was liable, although the path was not a highway by the law of Massachusetts, on the ground that the city, like a private owner, was liable for injuries caused by the negligence of its servants, to a person coming on grounds under its control, rightfully and by an implied invitation and license. 1869. *Oliver v. Worcester* (102 Mass. 489), III, 485.

29. — In an action against a city for the value of a horse lost by plaintiff in consequence of a defect in a bridge, alleged to be part of a highway, which the city was bound to keep in repair, it appeared that the way had been dedicated to the city, but that no acts of acceptance had been performed before the loss, other than public user, but that, after the loss, the city had repaired the bridge and the embankment adjacent. *Held*, that plaintiff could recover. *WILLIAMS, J.*, dissenting. 1870. *Manderschid v. City of Dubuque* (29 Iowa, 73), IV, 196.

30. *Snow and ice.* The plaintiff was injured while passing along defendant's street by a fall, occasioned by an accumulation of snow and ice upon the sidewalk; *held*, that defendant was liable. 1871. *Collins v. City of Council Bluffs* (32 Iowa, 324), VII, 200, and *note*, 206. *See HIGHWAYS.*

31. *Notice of defects.* In an action against a city to recover damages for an injury sustained from a defect in a highway, it must be shown that the city authorities had notice of the defect or that it was of such a nature and had existed for such a length of time that knowledge on their part must be

presumed. 1869. *Goodnough v. City of Oshkosh* (24 Wis. 549), I, 202; *Requa v. City of Rochester* (45 N. Y. 139), VI, 52.

32. — If a latent defect causing an injury could have been detected by proper and careful examinations by skilled persons employed by the authorities, the corporation will be liable. 1871. *Rapho, etc. v. Moore* (68 Penn. St. 404), VIII, 202.

33. — Whether notice can be inferred from length of time a defect has continued is a question for the jury. 1869. *Volley v. Inhabitants of Westbrook* (57 Me. 181), II, 80.

34. — **damages.** Where a pedestrian received personal injuries arising from a defective plank in a sidewalk of a city, and the officers of such city knew, at the time the accident occurred, that the general condition of the walk was such that from mere decay such an accident was liable to happen at any moment, *held*, (1) that the city was liable for such injuries, and chargeable with negligence in omitting to repair, without bringing home to the authorities actual knowledge of the looseness of the particular plank which occasioned the injuries; (2) that the party so injured, where the injury is permanent, can recover prospective, as well as past damages, not exceeding the amount claimed in the complaint. 1870. *Weisenberg v. City of Appleton* (26 Wis. 56), VII, 89, and *note*, 43.

35. — In an action against a municipal corporation for injuries occasioned by a defect in a sidewalk, the damages should not be vindictive or punitive, but only compensatory. 1869. *City of Chicago v. Langlass* (52 Ill. 256), IV, 608.

36. **Damages in grading street.** An action will not lie by an individual against a city for damages to his premises resulting from the exercise, by the city, of a lawful authority to grade the streets, there being no want of care or skill alleged. 1870. *Simmons v. City of Camden* (26 Ark. 276), VII, 620, and *note*, 260.

37. — Under a clause of the city charter giving to the common council power to regulate, improve, alter and extend streets, and to cause the removal of obstructions, etc., "making the parties injured by an improvement a just compensation, and charging upon those benefited a reasonable assessment, to be ascertained in such manner as shall be agreed upon by the parties, or by a jury of twelve men, to be organized in such manner as, by ordinance, the city council may provide," the council of the city of Jacksonville, in making improvements in a street of that city, caused injury to an adjoining lot, by digging away the sidewalk, removing shade trees, etc., for which no compensation was made to the owner. *Held*, (1) that the city was not liable at common law for the damages sustained by parties in consequence of making improvements under authority of law, and that the common law giving no remedy, that given by the legislature must be pursued; (2) that in an action to recover such damages, a declaration alleging that the defendant, "contriving and unjustly intending to injure, prejudice and aggrieve the plaintiff," dug away his sidewalk, destroyed his shade trees, and created a nuisance in front of his premises, states a cause of action at common law, the acts thus charged being in violation

of law, and that such declaration is not demurrable as stating no cause of action. 1871. *Dorman v. The City of Jacksonville* (18 Fla. 588), VII, 253, and note, 260.

38. **Cannot turn surface water on adjoining lands.** A municipal corporation cannot so adjust the grade of its streets as to turn surface water upon the lots of adjacent owners; nor can it lawfully permit property owners on a street to fill up a portion thereof in front of their lots in such a manner as to turn the surface water upon the property of others. 1870. *City of Aurora v. Reed* (57 Ill. 29), XI, 1.

39. **Removing soil from street.** The common council of the city of D. ordered a certain street to be filled, and directed that another street should be cut down in order to obtain earth for filling. *Held*, that the common council had no power to direct the cutting down of the latter street for the purpose of improving the former; and that the city was liable for damages to an owner of land adjoining the street cut down. 1871. *City of Delphi v. Evans* (36 Ind. 90), X, 12, and note, 19.

40. — The owners of lots abutting on streets and alleys in a city have an interest in the streets and alleys, and the right to their use as they were when the lots were purchased, subject to the paramount power of the common council in the mode prescribed by law to improve them. And the city authorities have no power to order the removal of earth from a street, unless it is done in pursuance of an order for the improvement of such street. *Id.*

41. — But where a municipal corporation laid out a public street over defendant's land and appraised his damages, *held*, that in reducing such street to the proper grade said corporation had an exclusive right as against the defendant to carry the soil therefrom and deposit it on a street in another part of the city for a necessary purpose. 1871. *City of New Haven v. Sargent* (88 Conn. 50), IX, 360.

42. **Liability for services on highway.** In an action by contractors for services performed in changing the route of a public road by direction of the supervisors, it appeared that the supervisors had no authority to change the route, but that the contractors had no knowledge of this want of authority. *Held*, that the town was liable. It seems that the town has a remedy over against the supervisors. 1870. *Cook v. Deerfield* (64 Penn. St. 445), III, 605.

43. **An injunction will lie,** at the suit of the proprietor, to restrain a municipal corporation from opening a new street on his land, and collecting a sum of money out of him, assessed as his benefit of the proposed improvement, and his contribution of the cost of opening the street, when the proceedings of the corporation appear to be regular, and their invalidity is to be shown by extrinsic evidence. 1872. *Miller v. Mayor* (47 Ala. 163), XI, 768.

44. **Railroad in street — duty of railroad to repair.** A railroad company, in part consideration of certain franchises, gave a bond to a city wherein they covenanted to keep the pavement of streets, through which their road ran, "in thorough repair within the tracks, and three feet on each side thereof, with the best water-stone, under the direction of such competent authority as the com-

mon council might designate." In an action on the bond for a breach of the covenant, *held*, that the railroad company was bound to keep the pavement in "thorough repair," and that the designation of "competent authority" to superintend such repairs was not a condition precedent; also, that the city could recover of the railroad company the amount of a judgment obtained against it by a traveler who had sustained injuries in consequence of the failure of the railroad company to keep the pavement in repair as required by the bond. 1872. *City of Brooklyn v. Brooklyn City Railroad Co.* (47 N. Y. 475), VII, 469.

45. **Falling signs.** Municipal corporations are not liable for injuries occasioned to a traveler in a street or highway, by the falling of a sign insecurely fastened over a sidewalk by the owner of a building, even though the dangerous condition of the sign had been brought home to the notice of the authorities. 1866. *Taylor v. Peckham* (8 R. I. 349), V, 578; *Jones v. Boston* (104 Mass. 75), VI, 194; *Hewison v. City of New Haven* (37 Conn. 475), IX, 842.

2. Sewers.

46. Defendant, a municipal corporation, constructed, in a lawful and careful manner, a sewer, by making the excavation for which the lateral support to plaintiff's house was withdrawn, so that the foundation walls gave way. *Held*, that defendant was not liable in damages. 1871. *City of Cincinnati v. Penny* (21 Ohio St. 499), VIII, 73.

47. The defendants, a municipal corporation, built a sewer, which was defective, and plaintiff's land was flooded and injured thereby. *Held*, that this was a taking of plaintiff's property within the meaning of the constitution, for which compensation was due, and that defendants were liable irrespective of negligence. 1878. *Thurston v. City of St. Joseph* (51 Mo. 510), XI, 463.

3. Fire department.

48. **Liability for defective fire department.** A city, authorized by statute to establish a fire department and procure engines, etc., necessary to extinguish fires, is not liable to an individual whose house has been burned, for any defect in the execution of such power, nor for a neglect of duty on the part of fire companies or their officers. 1869. *Wheeler v. City of Cincinnati* (19 Ohio St. 19), II, 868.

49. — In the absence of express statute, municipal corporations are not liable for personal injuries occasioned by reason of the negligence of the fire department in using or keeping in repair fire engines. 1870. *Fisher v. City of Boston* (104 Mass. 87), VI, 196.

50. — By an act of the legislature, a city was empowered to make a sufficient number of reservoirs "to supply water in case of fire." Under this act a reservoir was constructed, but was afterward partially destroyed by the city, so that when a fire occurred on plaintiff's premises, near by, there was no water in the reservoir to extinguish it. In an action against the city for damages, *held*, that plaintiff could not recover, on the ground that it was discretionary with the city to construct or maintain the reservoir. 1871. *Grant v. City of Erie* (69 Penn. St. 420), VIII, 272, and *note*, 275.

51. Acts of firemen. A city authorized by its charter to establish and regulate a fire department is not liable for injuries occasioned by the negligence of a fireman while engaged in the discharge of his duties, although such fireman is employed and paid by the city. 1871. *Jewett v. City of New Haven* (88 Conn. 868), IX, 888.

52. — A municipal corporation is not liable for damages caused by the acts of a voluntary association of firemen while engaged in extinguishing a fire within the corporate limits. 1871. *Torbush v. City of Norwich* (88 Conn. 225), IX, 895.

IV. ASSESSMENTS FOR LOCAL IMPROVEMENTS.

53. Of property benefited — strict compliance with charter. The legislature may authorize a municipal corporation to assess the whole or any portion of the expenses of local improvements on the property benefited; but when the charter provides that if the common council of a city shall deem any such improvements necessary, they shall so declare by resolution, such declaration must be made before the improvement is ordered. 1869. *Hoyt v. City of Saginaw* (19 Mich. 89), II, 76.

54. For repaving streets when void. A statute authorized the improvement of a street, already paved and in good condition, for a public drive, at the expense of adjacent owners, *held*, unconstitutional as imposing local assessments for public benefit. 1870. *Hammett v. Philadelphia* (65 Penn. St. 146), III, 615.

55. — But the foregoing case was distinguished, and assessments for repaving or reconstructing a street already constructed at the cost of adjoining owners, were *held* valid; and it was further *held*, that a provision in a charter that "after the first improvements, repairs were to be made at the expense of the city," was not a contract, and that a subsequent charter authorizing local assessments for repairs was constitutional. 1870. *Bradley v. McAtee* (7 Bush. 667), III, 809. 1871. *Broadway Baptist Church v. McAtee* (8 Bush. 506), VIII, 480.

56. Of farm lands. The legislature has no authority to compel the owners of farm lands, lying within one mile on each side of a public highway, to pay for grading, macadamizing and improving it, by an assessment upon their lands by the acre. 1871. *Washington Avenue* (69 Penn. St. 353), VIII, 255.

57. Of property of charitable and religious corporations. The constitution and statutes of Indiana provide for the exemption from assessment and taxation of property used for religious purposes. *Held*, that the tax contemplated is entirely distinct from an assessment for local purposes, and that such assessment does not come within the exception. 1871. *First Presbyterian Church v. The City of Fort Wayne* (36 Ind. 388), X, 35.

58. A charitable corporation, which is, by its charter, "exempted from taxation of every kind," is not exempted from special assessments against its property for improvements in a street on which it abuts. 1872. *Shehan v. The Good Samaritan Hospital* (50 Mo. 155), XI, 412; *Broadway Baptist Church v. McAtee* (8 Bush. 506), VIII, 481, and *note*, 487.

59. By the society's charter, it is enacted that the property of the society "shall not be subject to taxes or assessments." *Held*, that the word "taxes," in the exempting clause of the charter, must in the absence of any clear indication to the contrary, be understood to refer exclusively to the ordinary public taxes; and that the word "assessments" has reference to burdens of the same general character as those expressed by the word "taxes," and was not intended to include local assessments for municipal purposes. 1871. *State v. Mayor, etc., of Newark* (85 N. J. 157), X, 238; reversed (86 N. J. 478), 18 Am. Rep. 422.

60. A city charter directed that the assessment for local improvements should not in any year exceed ten per cent of the value of the property as valued and assessed on the tax duplicate for State, county and city taxes. *Held*, that as property for religious purposes could not be valued and assessed upon the tax duplicate, there was no mode for determining the rate of assessment to which it was liable for the construction of a sewer, and that such assessment could not be made. 1871. *First Presbyterian Church v. City of Fort Wayne* (86 Ind. 838), X, 85.

61. Of railroad. A city laid out a new street running parallel with a railroad, and appropriating throughout its whole extent some portion of the land embraced in the charter of the railroad. The railroad was assessed for benefits arising from the construction of the new street, upon the ground that by reason of the improvement the lines of sight would be extended and the company would be enabled to run their trains faster with less danger of casualties, and would not be put to the inconvenience of keeping gates and flagmen at the crossings. *Held*, (1) that in absence of proof of an existing necessity, the city had no right to appropriate the land included in the charter of the railroad company as a highway; (2) that the benefits could not be assessed upon the "franchises" of the company; and (3) that the benefits were too contingent and consequential to be assessed on the "corporation" or any of its property. 1869. *City of Bridgeport v. New York and New Haven R. R. Co.* (36 Conn. 255), IV, 68.

62. — *It seems* that such an assessment is not a tax within the meaning of the act of 1864, imposing a tax upon railroad franchises in lieu of all other taxes. *Ib.*

63. Of street railroad. A city was authorized by its charter to pave its streets and assess a proportional part of the expense upon persons whose property was especially benefited, which assessment should be a lien liable to foreclosure like a mortgage. The city having paved a street through which defendant's horse railway was laid, *held*, (1) that defendant's track was real estate and liable to assessment; (2) that the remedy to recover the same by lien was not exclusive, and that an action for debt would lie for it; (3) that the company, having suffered the city to make the improvements with full knowledge and without objection, were estopped from setting up that their charter required them to pave the road covered by their track at their own expense. 1871. *City of New Haven v. Fair Haven and Westfield Railroad Company* (38 Conn. 422), IX, 399.

64. Estoppel of adjoining owner. Where a clause of a city charter provides, "that the city council shall have power to cause to be opened, paved, repaved or improved, any street, lane, alley, market space or public landing, on petition of not less than two-thirds of the number of owners of any square, or parts of a square of said city bounding or abutting on such street," etc., a person who signs and presents such petition is estopped from claiming that the assessment of a tax for such improvement was unauthorized on the ground that two-thirds of the abutting owners did not join in the petition. 1871. *City of Burlington v. Gilbert* (31 Iowa, 856), VII, 148.*

65. — Where an owner of property in a city sees a contractor go on and make a street improvement adjoining said property, under a contract with the city, and makes no objection while the work is being done, he cannot, after the work is completed and accepted by the city as having been done according to the contract, enjoin the collection of the entire assessments made for such improvement, on the ground that the materials used and the work done were not strictly in accordance with the contract; in such case, a complaint for an injunction must show a tender, by the property owner to the contractor, of the value of the improvement. 1870. *City of Evansville v. Pfisterer* (34 Ind. 36), VII, 214.

V. MUNICIPAL AID TO RAILROADS.

66. An act of the legislature authorizing municipal corporations to aid in the construction of railroads and to impose a tax therefor, held, unconstitutional. 1870. *People v. Salem* (20 Mich. 452), IV, 400. 1869. *Hanson v. Vernon* (27 Iowa, 28), I, 215.

67. — A legislature may authorize municipal corporations to subscribe for stock in railroads and to issue bonds therefor. 1871. *Comr. of Leavenworth v. Miller* (7 Kans. 479), XII, 425. 1870. *Stewart v. Supervisors of Polk Co.*, overruling *Hanson v. Vernon*, I, 238.

68. — The constitution of Alabama provides that private property shall not be taken "for private use, or for the use of corporations, other than municipal, without consent of the owner," and that "the State shall not engage in works of internal improvements, but its credit in aid of such may be pledged by the general assembly on undoubted security." *Held*, (1) that the legislature of the State has power to authorize a county, as a body corporate, on a popular vote of the county, to subscribe for stock in a railroad company; and (2) that, for the payment of stock so subscribed, the county, as a corporation, may be authorized and compelled (by *mandamus*) to issue bonds of the county and deliver them to the railroad company in which the stock is subscribed. 1871. *Ex parte Selma & Gulf R. R. Co.* (45 Ala. 696), VI, 722.

69. — Taxation in aid of railroads owned and operated by private individuals or corporations is unconstitutional, and an act of the legislature

*See *Matter of Petition of Sharp*, 1 N. Y. Sup. 427, where it was held that one who signed a petition for the repavement of a street, was not thereby estopped from denying the legality of an assessment for such repavement on the ground that a majority of the property owners had not signed the petition. This judgment was affirmed in the Court of Appeals.

authorizing county orders to be issued in aid of a railroad, and taxes to be levied for the payment thereof, on condition that the consent of the majority of the people should be manifested by ballot, and the railroad should be brought to a specified state of completion, is void. 1869. *Whiting v. The Sheboygan & Fond du Lac R. R. Co.* (25 Wis. 157), III, 80.

70. — An act of the legislature authorizing a city to raise, by taxation of its citizens, the money for constructing a railroad leading into such city, from points within or without the State, when the railroad is deemed by a majority of the citizens to be essential to the interests of the city, is not unconstitutional. 1871. *Walker v. City of Cincinnati* (21 Ohio St. 14) VIII, 24.

71. **Restriction on State.** A State constitution provided that "the State shall never be a party in carrying on any work of internal improvement." *Held*, not to be a restriction on municipal corporations. 1871. *Commissioners of Leavenworth v. Miller* (7 Kans. 479), XII, 425.

72. **Irregularity in proceedings — effect on bonds.** Where a statute authorizes the issue of county bonds after submitting certain questions to the people of the county to be voted upon, and the bonds are issued by the county, of its own motion, and without submitting the questions to the voters of the county, the bonds are void, even in the hands of *bona fide* holders; but the legislature has power to cure the defect by authorizing the county to take up the old bonds and issue, in lieu thereof, new bonds, which would be valid. 1871. *Steines v. Franklin County* (48 Mo. 167), VIII, 87, and *note*, 100.

73. — Where county bonds are, by special act of the legislature, authorized to be issued upon a popular vote "specifying the amount," and the bonds are issued upon a popular vote which failed to "specify the amount," this circumstance will be deemed an irregularity simply, and not sufficient to render the bonds void in the hands of *bona fide* holders. 1871. *State of Missouri ex rel. Neal v. Saline County Court* (48 Mo. 390), VIII, 108.

See HIGHWAYS; WATER AND WATER-COURSE.

MURDER — *See* CRIMINAL LAW.

MUTUALITY.

I. OF CONTRACTS — *See* CONTRACTS.

II. OF WILLS — *See* WILLS.

NAME.

Under what circumstances a name will be protected as a trade-mark
See TRADE-MARK.

NATIONAL BANKS — *See* BANKS AND BANKING.

NATURALIZATION — *See* CRIMINAL LAW; JURISDICTION.

NAVIGABLE STREAMS.

I. LEGISLATION AS TO — *See* CONSTITUTIONAL LAW.

II. RIGHTS AND INCIDENTS — *See* WATER AND WATER-COURSES.

NEGLIGENCE.

- I. MISCELLANEOUS CASES.
- II. NEGLIGENT COMMUNICATION OF FIRE.
- III. CONTRIBUTORY NEGLIGENCE.
- IV. OF CARRIERS — *See* CARRIERS.
- V. OF MUNICIPAL CORPORATIONS — *See* MUNICIPAL CORPORATIONS.
- VI. OF MASTER OR SERVANT — *See* MASTER AND SERVANT.
- VII. BY WATER — *See* SHIP AND SHIPPING.

I. MISCELLANEOUS CASES.

1. In sale of defective machinery. A balance wheel, already made and in hand, having defects which weakened it, was sold by the defendant to a person who bought it for his own use. The defects in the wheel were pointed out to the purchaser, and fully understood by him. The wheel was used by the buyer for some years, and was then taken into the possession of the plaintiff's intestate, who used it for his own purposes. While so in use, it flew apart by reason of its original defects, and the plaintiff's intestate was killed. *Held*, that the seller was not guilty of such negligence as would make him liable in an action for causing the death of the plaintiff's intestate. 1870. *Loop v. Litchfield* (42 N. Y. 851), I, 548.

2. — Defendant manufactured a steam boiler and sold it. While it was in the possession and control of the purchaser it exploded, and plaintiff, a third party, was injured. *Held*, that defendant was not liable to plaintiff, even if the construction of the boiler was defective. 1873. *Loose v. Clute* (51 N. Y. 494), X, 638.

3. Sale of poison. Defendant, an apothecary, by his servant, negligently sold, as and for tincture of rhubarb, two ounces of laudanum to P., who procured it for the purpose of administering it, and who did administer it, as a medicine to his servant, the plaintiff's intestate, from the effects of which he died. *Held*, that defendant was liable in damages to plaintiff, the administratrix. 1870. *Norton v. Sewall* (106 Mass. 148), VIII, 298, and *note*, 299.

4. In keeping or using property. The owner of a steam boiler who operates and uses the same upon his own premises, in such a manner that it is not a nuisance, is not liable for damages done to an adjoining owner by its explosion, without proof of fault or negligence on his part. 1873. *Loose v. Buchanan* (51 N. Y. 476), X, 623. See contrary principle, *Wilson v. City of New Bedford* (106 Mass. 261), XI, 352.

5. — Defendant excavated a tunnel in his own land, extending under the bed of a stream. The pressure of the water having broken in the roof of the tunnel the water rushed in and through the tunnel and undermined plaintiff's land. *Held*, that defendant was liable for the damage without proof of negligence or want of skill on his part. 1871. *Cahill v. Eastman* (18 Minn. 324), X, 184.

6. — So where defendant accumulated water in a reservoir, which by percolation escaped upon to the plaintiff's land and injured it; *held*, that defendant was liable even though plaintiff sold the land to the defendant for the pur-

pose of constructing the reservoir. 1871. *Wilson v. City of New Bedford* (108 Mass. 261), XI, 352.

7. At railroad crossing. In an action against a railroad company to recover for causing the death of plaintiff's decedent, *held*, that it is negligence for one approaching a railway crossing not to use the sense of sight and hearing to discover a coming train, and that, in the absence of special statute, the omission of all signals at crossings is not negligence *per se* on the part of the railroad company. 1870. *Bellefontaine Railway Co. v. Hunter* (38 Ind. 835), V, 201, and *note*, 216.

8. — The citizen who, on a public highway, approaches a railroad track and can neither see or hear any indications of a moving train, is not chargeable with negligence in assuming that there is no car sufficiently near to make the crossing dangerous. He has a right to presume that in handling their cars the railroad companies will act with appropriate care, and that the usual signals of approach will be seasonably given. 1870. *Tabor v. Missouri Valley R. R. Co.* (46 Mo. 353), II, 517.

9. Question of care for jury. In an action against a railroad company for killing plaintiff's horse at a highway crossing, evidence was adduced showing that a servant of plaintiff, employed to deliver goods, upon stopping with the horse and wagon to deliver a parcel at a house from fifty to a hundred rods from the railroad crossing, left the horse unfastened for four or five minutes, while he was in the house, knowing it was not afraid of cars, and having used it for three or four months without ever hitching it or knowing it to start, and that the horse started while the servant was in the house, and ran down the street and into defendant's train, which was crossing the street at the moment, whereby it was killed. The judge ruled that, as at the time of the accident the horse was frightened, and not under the control of any one, it was not the subject of any care whatever, and, therefore, the plaintiff could not recover, whatever negligence might be shown on part of defendants. *Held*, error, and that the question of due care of plaintiff was for the jury. 1870. *Southworth v. Old Colony & Newport Railway Company* (105 Mass. 342), VII, 528.

10. — Plaintiff, a passenger upon defendant's railroad, had a ticket for F., where the train was advertised to stop. The train did not stop, but passed by the station very slowly, and a brakeman told plaintiff that the train would not stop, and that she had better get off, which she did, and in doing so was thrown down and injured. *Held*, that the plaintiff was not, as a matter of law, negligent, but that the question should go to the jury. 1872. *Flier v. N. Y. C. R. R. Co.* (49 N. Y. 47), X, 327.

11. Collision — grounded tow — towboat. The defendant's steamer, St. John, in attempting to pass a grounded tow belonging to the plaintiff, instead of taking the ordinary channel, which was on the west side of the tow, went to the east side, the pilot supposing that the channel had changed. The pilot knew that the tow was aground. *Held*, that the pilot was guilty of negligence, and the owners of the St. John liable for damage done by collision with a vessel belonging to the tow. 1870. *Austin v. N. J. Steamboat Co.* (43 N. Y. 76), III, 663.

12. — He was negligent, although the accident may have been caused by an obstacle which had been recently and suddenly formed and could not be seen by him. A party cannot avail himself of the defense of "inevitable accident," who, by his own negligence, gets into a position which renders the accident inevitable. *Id.*

13. — The *St. John*, before reaching the tow, signaled that she intended to go to the east. No answer was made by those on the tow, though it had been grounded by its pilot making a mistake similar to that of the pilot of the *St. John*, and some of those in charge had sounded and discovered that the channel had changed. *Held*, that those managing the tow were not guilty of contributory negligence. *Id.*

14. — There was no legal duty on the part of the tow to either signal or impart any information as to the channel to the *St. John*. A steamer with full control of its machinery, desiring to pass a vessel, whether stationary or moving, must do it on its own responsibility, and is bound to select its route at its peril. *Id.*

15. When landlord liable for injuries from leased premises. The plaintiff, while passing along a highway, was injured by a mass of ice and snow falling upon her from the roof of defendant's building. In an action to recover damages, *held*, that the defendants were liable, although the building was occupied by tenants who had covenanted to keep the premises in repair, as it did not appear that the roof was under their control. 1869. *Shipley v. Fifty Associates* (101 Mass. 251), III, 346.

16. — So when a building is so near the street, and of such a shape and character that snow and ice collected upon the roof, in the natural course of things, falls down upon the sidewalk, and thereby injures a passer, using due care, the owner of the building is liable; and this is so notwithstanding the rooms in the building are occupied by tenants, the owner having access to and control of the roof. 1870. *Shipley v. Fifty Associates* (106 Mass. 194), VIII, 318.

17. — Where premises are in possession of a tenant the owner is not liable for injuries occasioned by their getting out of repair, unless he is bound to repair, or unless the premises were in bad condition when possession was given to the tenant. 1870. *Fisher v. Thirkell* (21 Mich. 1), IV, 422.

18. — Defendant, owner of a building, rented the lower story to plaintiff and the upper stories to other tenants. There was, in the upper part, a water-closet, to which all the tenants had access, and which, though properly constructed, had become out of order by reason of the negligence of the tenants, of which fact defendant had notice. *Held*, that defendant was liable for damages occasioned to plaintiff's goods by reason of the overflow of said closet. 1871. *Marshall v. Cohen* (44 Ga. 489), IX, 170.

19. — Plaintiff fell through the covering of a coal hole in the sidewalk. Defendant was the lessee of the premises to which the coal hole was appurtenant. The injury occurred by reason of the improper construction of the covering. *Held*, that defendant was liable, separately, or jointly with the lessor, and that no proof of notice of the defect to the lessee was necessary. 1873. *Irvine v. Wood* (51 N. Y. 224), X, 608.

20. Animals killed by cars. An animal was killed by a train of cars running at the ordinary speed. *Held*, that the fact that the speed of the train was not checked while approaching the animal did not tend to show negligence; nor did the fact that the engineer did not see the animal until the train was close to it show want of ordinary care. 1869. *Bemis v. Connecticut R. R. Co.* (42 Vt. 375), I, 339.

21. Where the live stock of plaintiff, running in his field, strayed upon defendant's unfenced railroad and were killed by a passing train, these facts, unexplained, make a *prima facie* case of negligence against the defendant. The plaintiff was not chargeable with contributory negligence, from the fact that he knew that the railroad was not fenced when he turned the stock into the field. 1871. *McCoy v. California Pacific Railroad Co.* (40 Cal. 532), VI, 623.

22. Declaration against a railroad company for negligence whereby plaintiff was injured, not averring that he was himself in the exercise of due care, *held*, good. 1873. *Thompson v. North Missouri Railroad Company* (51 Mo. 190), XI, 443.

23. Of railroad — burden of proof. In an action against a railroad company to recover for injuries occasioned through its alleged negligence, *held*, (1) that the fact that the defendant had leased that part of the road where the accident happened, without authority of law, was no defense; and, (2) that although the burden was on the plaintiff to prove defendant's negligence, yet proof that the injury was caused by the cars running off the track was evidence of negligence sufficient to charge defendant in the absence of explanation. 1872. *Feital v. Middlesex R. R. Co.* (109 Mass. 398), XII, 720.

24. In order to extinguish a fire in plaintiff's building it was necessary to, and firemen did, lay a hose across defendants' railroad. Defendants' servants, with notice of the presence of the hose, and although having time to stop the train until the hose could be uncoupled, ran a train over and severed the hose, thereby cutting off the water from the fire which otherwise might and probably would have been extinguished, and the building was consumed. *Held*, that the hose was lawfully laid across the track, and that the act of the defendants' servants was the proximate cause of the destruction of the building, and that the defendants were liable. 1872. *Metallic Compression Casting Co. v. Fitchburg R. R. Co.* (109 Mass. 277), XII, 689.

25. Evidence. In an action against a railroad company to recover damages for causing the death of plaintiff's intestate, *held*, that the declarations of the fireman of the train which caused the death, made soon after the accident, as to the speed of the train, the position of the deceased, and the giving of the customary signals, were inadmissible. 1870. *Bellevue Ry. Co. v. Hunter* (33 Ind. 335), V, 201.

II. NEGLIGENT COMMUNICATION OF FIRE.

26. A man who negligently sets fire on his own land, and keeps it negligently, is liable for injuries done by its direct communication to the property of another, whether through the air or along the ground, and whether he might or might not have reasonably anticipated the particular manner and

direction in which it was actually communicated. 1871. *Higgins v Dewey* (107 Mass. 494), IX, 68.

27. — He who negligently sets or negligently manages a fire in his own property is liable to his immediate neighbor for the damages caused to him by the spread of the fire on to his neighbor's next adjacent property. 1872. *Webb v. Rome, etc., R. R. Co.* (49 N. Y. 420), X, 389.

28. **By railroad locomotive.** Where, from the defect in the construction of a railway engine, carelessness in those operating it, or want of proper appliances to prevent the emission of sparks or coals of fire from the smoke stack, property adjoining a railway is destroyed by fire, the railroad corporation is liable for the damages resulting from such fire; and absence of the best contrivance known to prevent the spread of fire from a locomotive will be construed as negligence on the part of the railroad corporation. 1870. *Jackson v. The Chicago & N. W. Railway Co.* (31 Iowa, 176), VII, 120; *Steinweg v. Erie Railway Co.* (43 N. Y. 128), III, 673.

29. — But a railroad company is not bound to use every possible prevention which scientific skill may suggest, nor to adopt an untried machine, and therefore it is negligent in not supplying its engines with spark arresters only when such apparatus is known and in practical use. 1870. *Steinweg v. Erie Railway Co., supra.*

30. — It is evidence of negligence for a railroad company to run an engine without a screen on the smoke-pipe, from which large sparks are emitted so as to set fire to an adjoining dwelling. 1871. *Bedell v. Long Island R. R. Co.* (44 N. Y. 367), IV, 688.

31. — It is a question for the jury whether a railroad company has taken reasonable precaution to prevent the escape of sparks from its engine. 1870. *Toledo, etc., R. R. Co. v. Pindar* (53 Ill. 447), V, 57.

32. — Where a locomotive, which is well constructed and properly managed, nevertheless emits sparks sufficient to set fire to cut and dried grass and weeds which the railroad company had permitted to lie in a combustible state upon its land along the track, and the fire is communicated thence to an adjoining field and, through stubble and uncut but dry grass, to a wheat-stack, which is thus consumed, the company is liable for the loss. 1870. *Flynn v. San Francisco & San Jose R. R. Co.* (40 Cal. 14), VI, 595, and *note*, 597.

33. — Whether or not a railroad company is guilty of negligence in permitting combustible materials to accumulate upon its lands is a question for the jury. 1870. *Keses v. Chicago & N. W. R. R. Co.* (30 Iowa, 78), VI, 643; *Kellogg v. Chicago & N. W. R. R. Co.* (26 Wis. 228), VII, 69, and *note*, 80; *Webb v. Rome, etc., R. R. Co.* (49 N. Y. 420), X, 389.

34. — **contributory negligence by land owner.** Land owners contiguous to railroads are as much bound, in law, to keep their lands from an accumulation of dry grass and weeds as railroad companies are; and when a fire is ignited on a railroad company's right of way, and is communicated in consequence of such accumulations to fields adjoining, the negligence of the owner will be held to have contributed to the loss, and unless it appears that

the negligence of the company is greater than that of the land owner, the latter cannot recover. 1870. *Chicago and Northwestern R. R. Co. v. Simonson* (54 Ill. 504), V, 155; *Kesee v. Chicago & N. W. R. R. Co.* (30 Iowa, 78), VI, 648; see, *contra*, *note*, 157.

35. — But, on the other hand, it was held that the failure of a land owner to remove the dry grass or stubble from his own land in order to avoid anticipated danger from fire caused by the default or misconduct of a railroad company was not negligence on his part. 1870. *Kellogg v. Chicago & N. W. R. R. Co.* (26 Wis. 238), VII, 69, and *note*, 80.

36. **Proximate and remote cause.** By reason of defendant's negligence sparks from one of its locomotives set fire to a warehouse near the railroad track, which communicated fire to plaintiff's building, situated thirty-nine feet distant. *Held*, that defendant was not liable therefor, the injury being too remote. 1870. *Pennsylvania R. R. Co. v. Kerr* (62 Penn. St. 358), I, 481.

37. — On the contrary, *held*, that the fact that natural agencies, as high winds or drought, contributed to cause the injury, or that the property destroyed was at a distance from the place where the fire originated, does not affect the question as to the liability of a railroad company, or render the fire the remote and not the proximate cause of the injury done. 1870. *Kellogg v. Chicago & N. W. R. R. Co.* (26 Wis. 238), VII, 69, and *note*, 80.

38. — A building belonging to a railroad company took fire from sparks from one of their engines, and from this building fire was blown across the street to the storehouse of P., which, with several thousand dollars in money contained therein, was consumed. In an action by P., to recover for the loss, *held*, (1) that, as the loss of the money could have been prevented by reasonable efforts for its preservation, the company were not responsible as to it; (2) that the question whether the injury sustained was too remote, was for the jury. 1870. *Toledo, Peoria and Warsaw Railway Co. v. Pindar* (53 Ill. 447), V, 57.

39. — In a time of extreme drought, one of defendant's locomotives, in passing along its road, opposite plaintiff's land, dropped live coals upon the track, which set fire to a tile, the fire thence communicated to weeds, grass and rubbish, which defendant had suffered to accumulate by the side of its track, and thence it spread to plaintiff's land, burning and destroying his growing forest trees. *Held*, that the damages to plaintiff were not too remote. 1872. *Webb v. Rome, etc., R. R. Co.* (49 N. Y. 420); X, 889.

40. **Burden of proof—evidence of negligence.** The mere fact of injury from fire, set by sparks emitted from a railroad engine, is not *prima facie* evidence of negligence on the part of the company. The burden of proof is on the plaintiff to show that due care and caution have not been exercised by the company: but this fact may be satisfactorily established by evidence of circumstances bearing more or less directly upon the fact of negligence, such as the absence of, or defect in, the spark arrester, an unlawful speed or an extraordinarily heavy train. 1870. *Gandy v. The Chicago & Northwestern R. R. Co.* (30 Iowa, 420), VI, 682.

41. — In an action against a railroad company to recover for injuries occasioned by the escape of fire from one of its engines, *held*, that the burden of proof is on the company to show that the engine was properly constructed and properly managed. 1872. *Spaulding v. Chicago & Northwestern R. R. Co.* (80 Wis. 110), XI, 550.

III. CONTRIBUTORY NEGLIGENCE.

42. *Effect of contributory negligence — burden of proof.* Whenever there is negligence on the part of the plaintiff, contributing directly, or as a proximate cause, to the occurrence from which the injury arises, such negligence will prevent the plaintiff from recovery; and the burden is always upon the plaintiff to establish either that he himself was in the exercise of due care, or that the injury is in no degree attributable to any want of proper care on his part. 1869. *Murphy v. Deane* (101 Mass. 455), III, 390.

43. — But in Illinois, the rule is that when the negligence of the plaintiff is slight as compared with that of the defendant, a recovery may nevertheless be had. 1869. *Chicago & Alton R. R. Co. v. Pondrom* (51 Ill. 833), II, 306.

44. *By infant — negligence of parents.* The plaintiff, an infant four years and seven months old, while returning unattended from school, was run over by defendant in the public street. In an action to recover for the injuries, *held*, that it was for the jury to determine whether or not plaintiff's parents were guilty of negligence in permitting him to be in the street alone. 1870. *Lynch v. Smith* (104 Mass. 53), VI, 188.

45. — In such action the opinion of plaintiff's school teacher as to his capacity is admissible. *Id.*

46. — When an infant is in the streets, without negligence either on the part of himself or parents, he is bound to use only such reasonable care as he is capable of, though of less degree than adults would be bound to use under the circumstances. *Id.*

47. — Where a child about five years of age is negligently allowed, by its parents, to go into the public street, yet does no act which prudence would forbid, and omits no act which prudence would dictate, there is no negligence contributory to an injury and which will prevent a recovery by the child. *Id.*

48. — Where a child, three years and two months old, is fatally injured by the negligent management of a street railroad car, if the child exercised proper care, the company is liable irrespective of the negligence of its parents in allowing it to go upon the street; but if the child did not exercise proper care, the conduct of its parents is essential to determine the liability of the company. Negligence of the parents, in the latter case, releases the company from liability, but the absence of negligence in the parents fixes the company's liability. 1872. *Idl v. The Forty-second Street and Grand Street Ferry R. R. Co.* (47 N. Y. 317), VII, 450.

49. — It is not negligence *per se* for a parent to send a child three years and two months old across an avenue, through which a street railroad runs, in charge of a sister nine and a half years old. The question of parental negligence in such a case is for the jury. *Id.*

50. — A child, nineteen months old, strayed from its mother to the railroad track of the Pennsylvania Railroad Company, and was run over by a car, which had been detached from the engine and sent around a curve, on a slight down grade, unattended by a brakeman. The track where the child was injured ran through a lot which the public had been permitted, by the railroad company, to use freely. In an action to recover for the injuries received by the child, the judge took the question of negligence away from the jury and charged that no more than \$3,000 could be recovered, by reason of the limit in the act of assembly of 1868. The injury happened in 1864, and this action was commenced in 1866. *Held*, (1) that, as in this case the negligence alleged, consisted of a positive act of carelessness in sending a car around a curve out of sight, on a descending grade, at a place where persons might be expected to be, from the permissive use suffered by the company, the question of negligence was for the jury; (2) that the child was incapable of contributory negligence. 1870. *Kay v. Pennsylvania Railroad Co.* (65 Penn. St. 269), III, 638.

51. — The fact that a parent living in a quiet street, where few vehicles pass, permits a child six years old to go unattended upon the streets, does not constitute negligence *per se*. It is a question proper for the jury. 1872. *Cosgrove v. Ogden* (49 N. Y. 255), X, 361.

52. Arm projecting from car. Plaintiff's arm while projecting from a car window was injured by coming in contact with a car standing near the track. *Held*, that defendants were liable. 1869. *Chicago & Alton R. R. Co. v. Pondrom* (51 Ill. 333), II, 306.

53. While endeavoring to save life. Plaintiff's intestate, while endeavoring to rescue a child from being run over by an approaching railway train, was himself struck by the train and so injured that he died. *Held*, that it was proper to submit to the jury the question, whether the negligence of the deceased contributed to the injury. 1871. *Eckert v. Long Island R. R. Co.* (43 N. Y. 502), III, 721.

54. — The law has so high a regard for human life that it will not impute negligence to an effort to preserve it, unless made under such circumstances as to constitute rashness in the judgment of prudent persons. Although an exposure to injury, for the purpose of saving property, is negligence, for the purpose of saving human life, it is not so, unless such as to be regarded rash or reckless. *Ib.*

55. A boy was warned off a gangway, because it was a passage for laborers to pass through with iron trucks, wheelbarrows, etc. He was subsequently in the gangway, when he was killed by the falling of a car negligently pushed off a tramway overhead. *Held*, that he was not guilty of contributory negligence, there being no reason to expect danger from the cars above. 1871. *Gray & Bell v. Scott and Wife* (66 Penn. St. 345), V, 371.

56. Questions for jury — comparative negligence — damages. In an action to recover for injuries received by the son of plaintiff in consequence of the alleged negligence of defendant in placing barrels and a counter on a public street, it appeared that the son was twelve years old, and that, in passing on the sidewalk, he put his hands upon the counter, as if to jump upon it when

it fell and fractured his leg. *Held*, (1) that the age and discretion of the boy were subjects of consideration by the jury; (2) that, as the negligence of defendant was much greater than that of the boy, plaintiff could recover; and (3) that evidence tending to show permanent injury, as affecting the amount of damages, was properly submitted to the jury. 1870 *Kerr v. Forgue* (54 Ill. 482), V, 146, and *note*, 148.

57. **When violation of law not negligence.** An action will lie for injuries willfully or carelessly done to plaintiff, to which his own conduct has not contributed, although at the time of the injury he was violating the law. 1870. *Steele v. Burkhardt* (104 Mass. 59), VI, 191, and *note*, 193.

58. — Plaintiff's team, while standing in a public street in a manner prohibited by a city ordinance, was negligently driven against and injured by defendant's servant. *Held*, that plaintiff could recover, the only fault on his part consisting in the violation of the city ordinance. *Ib*.

59. — So where one was injured by a defect in a street while driving at a rate of speed forbidden by law, *held*, that he could recover, the jury having found that the speed did not contribute to the injury. 1870. *Baker v. Portland* (58 Me. 199), IV, 274.

60. **By one wrongfully on railroad track — when company not excused.** Plaintiff desired to cross defendant's track at a public crossing, but was prevented from doing so by a train of defendant's cars standing at that point. She then attempted to cross at another place, where there was no public crossing, and, in so doing, was struck and injured by defendant's car. *Held*, that, notwithstanding the fact that plaintiff was not rightfully on the track at the place of the injury, yet, if the injury might have been avoided by the use of ordinary care and caution by the defendant, the latter was liable therefor. 1872. *Brown v. The Hannibal & St. Joseph Railroad Co.* (50 Mo. 461), XI, 420, and *note*, 425.

See NUISANCE.

NEGOTIABLE INSTRUMENT.

Stock certificate. A certificate of stock transferred in blank is not a negotiable instrument. 1863. *Shaw v. Spencer* (100 Mass. 383), I, 115.

See BILLS AND NOTES.

NEWSPAPERS—*See* NOTICE.

NEW TRIAL.

1. **Jurors drank intoxicating liquors after they had retired to consider of their verdict.** *Held*, ground for a new trial. 1869. *Ryan v. Harrow* (27 Iowa, 494), I, 802; *Davis v. State* (35 Ind. 495), IX, 760, and *note*, 764.

2. — Where, however, the liquor was used as a medicine, it was *held* not to vitiate the verdict in the absence of any showing that it was so used without the knowledge of the defendant's counsel, or that the effects were intoxicating. 1871. *State v. Morphy* (33 Iowa, 27), XI, 122.

3. An ordinance of a constitutional convention, granting new trials in certain cases, is void. 1873. *Lawson v. Jeffries* (47 Miss. 686), XII, 342.

4. Where, under an indictment for murder, the defendant is convicted of manslaughter, and a new trial is granted on his motion, he may at the second trial be convicted of murder. 1871. *State v. McCord* (8 Kans. 232), XII, 469; *sed contra*, note, 473; and *State v. Martin* (30 Wis. 216), XI, 567.

5. Evidence of jurors on motion for new trial. On a motion for a new trial on the ground of bias on the part of one of the jurors, the evidence of jurors as to the motives and influences which affected their deliberations is inadmissible, either to impeach or to support the verdict. But a jurymen may testify to any facts bearing upon the question of the existence of any extraneous influence, although not as to how far that influence operated upon his mind. So a jurymen may testify in denial or explanation of acts or declarations outside of the jury room, where evidence of such acts has been given as ground for a new trial. 1871. *Woodward v. Leavitt* (107 Mass. 453), IX, 49.

NOLLE PROSEQUI — *See* CRIMINAL LAW.

NON-RESIDENT — *See* LIMITATION OF ACTIONS.

NOTARY — *See* BILLS AND NOTES.

NOTICE.

I. PUBLICATION OF.

II. TO AGENT — *See* AGENCY.

III. OF DEFECTS IN STREETS — *See* HIGHWAYS.

When legal notices are directed to be published in a newspaper, a newspaper in the English language is meant, in the absence of express directions to the contrary. 1873. *Graham v. King* (50 Mo. 22), XI, 401.

NUISANCE.

1. The act of making a speech in a public street, although it may become a nuisance by obstructing the public highway, is not a nuisance *per se*. 1872. *Fairbanks v. Kerr* (70 Penn. St. 86), X, 664.

2. Brick-burning, being a useful and necessary employment, will not be restrained by injunction, although carried on in the outskirts of a city, because it occasions some discomfort, or even injury to those residing in the vicinity. Upon an application to restrain the exercise of a lawful business, the court will look at the customs of the people, the characteristics of their business, the common uses of property, and the peculiar circumstances of the place. 1873. *Huckenstine's Appeal* (70 Penn. St. 102), X, 669, and note, 674.

3. Objects within the limit of a highway which, in their nature, are calculated to frighten horses of ordinary gentleness, may be nuisances which make the highway defective within the meaning of a statute requiring towns to keep

their highways "in good and sufficient repair." Whether in any case such an object is a nuisance, is a question of fact for the jury. 1872. *Ayer v. City of Norwich* (39 Conn. 376), XII, 396, and *note*, 400; *Foshay v. Glen Haven* (25 Wis. 288), III, 73.

4. **Steam whistle near highway.** Plaintiff was driving a horse of ordinary gentleness on a highway. When passing defendant's factory, situated near the highway, the horse became frightened by the blowing of a steam whistle upon said factory, and plaintiff was injured. *Held*, that defendants were liable. 1871. *Knight v. Goodyear's India Rubber Glove Manufacturing Co.* (38 Conn. 438), IX, 406.

5. **The disturbance of a religious congregation by singing**, when the singer does not intend so to disturb it, but is conscientiously taking part in the religious services, may be a proper subject for the discipline of his church, but is not indictable. 1873. *State v. Linkhaw* (69 N. C. 214), XII, 645.

6. **A person who uses his property in such a manner as necessarily tends to injure the property of another is liable to that other for any injury which may result from such use**, without regard to considerations of care and skill therein. 1871. *Cahill v. Eastman* (18 Minn. 324), X, 184.

7. **Defendant excavated a tunnel in his own land, extending under the bed of a stream.** The pressure of the water having broken in the roof of the tunnel, the water rushed in and through the tunnel and undermined plaintiff's land. *Held*, that the defendant was liable for the damage occasioned, without proof of negligence or unskillfulness on his part. *Ib.*

8. — One who brings or accumulates on his own land any thing which, if it should escape, may cause damage to his neighbor, and which does escape and cause such damage is liable. 1871. *Wilson v. City of New Bedford* (106 Mass. 261), XI, 352; see, otherwise, *Loose v. Buchanan* (51 N. Y. 476), X, 623, where the owner of a steam boiler which exploded without his fault and injured his neighbor was held not to be liable.

9. **To render a party liable to an action for damages resulting from a nuisance upon his land, where the nuisance was created by a previous owner of the land before the conveyance to the defendant, the proof must show notice to, or knowledge on the part of the defendant of the existence of the nuisance, but no request to abate it is necessary.** Proof of the mere continuance of the nuisance on the land of the defendant, without such knowledge or notice of its existence as to charge it with fault for such continuance, is not sufficient to maintain the action. 1873. *Conhocton Stone Road v. The Buffalo, etc., R. R. Co.* (51 N. Y. 573), X, 648.

10. **Liability of landlord for injuries occasioned by the leased premises.** A landlord is liable for injuries occasioned by ice and snow falling from the roof of the demised premises, although the building was occupied by tenants who had covenanted to keep the premises in repair, where it does not appear that the roof was under the control of the tenants. 1869. *Shipley v. Fifty Associates* (101 Mass. 251), III, 346; *Shipley v. Fifty Associates* (106 Mass. 194), VII, 318.

11. — Defendant, owner of a building, rented the lower story to plaintiff and the upper stories to other tenants. There was, in the upper part, a water-closet to which all the tenants had access, and which, though properly constructed, had become out of order by reason of the negligence of the tenants, of which fact defendant had notice. *Held*, that defendant was liable for damages occasioned to plaintiff's goods by reason of the overflow of said closet. 1871. *Marshall v. Cohen* (44 Ga. 489), IX, 170.

12. When lessee liable for. Where a coal-hole had been excavated in the sidewalk of a city, and was used by a subsequent lessee of the premises for the benefit of which it was made, and to which it was appurtenant, and in consequence of its defective covering, the plaintiff, passing along the street, fell through the opening and was injured; *held*, that the lessee was liable separately, or jointly with the lessor, for the injuries sustained, and that proof of notice of the defect to the lessee was not necessary. 1872. *Irvine v. Wood* (51 N. Y. 224), X, 603.

13. — Where there is no provision in a lease in regard to injuries, it is the duty of the person having control of the premises to keep a scuttle in the sidewalk in repair; and the owner of the premises will not be liable to an injured party for neglect to keep the scuttle in repair if it was in good condition when possession was given under the lease. 1870 *Fisher v. Thirkell* (21 Mich. 1), IV, 432.

14. Cooking range — when landlord liable. Defendant erected in his house adjoining plaintiff's premises, a cooking range, so near to the partition wall that the ordinary use of it injured plaintiff's goods and rendered his premises uncomfortable and disagreeable. *Held*, that the use of the range was a nuisance, and that an action on the case would lie against defendant, although he had leased the premises containing the range to a tenant, who built the fires. 1871. *Grady v. Wolner* (46 Ala. 381), VII, 598.

15. Where machinery produces a jarring of buildings. Defendant carried on a manufactory in a building adjoining two buildings owned by plaintiff. Defendant's machinery was run by steam power, and its operation produced a jarring and shaking of plaintiff's buildings, to their injury and to the annoyance of the occupants. Plaintiff's house had been leased by the defendant for ten years, and the alleged nuisance was erected and put into operation during the existence of the lease. Fourteen days after the lease expired plaintiff brought an action to restrain defendant from the use of his steam power. Plaintiff's evidence as to the injurious effects of his premises was confined to the effects produced during the existence of the lease. *Held*, that plaintiff was entitled to a judgment, enjoining defendant from so conducting his business as thus to injure the plaintiff; that plaintiff was not bound to take measures to abate the nuisance during the existence of the tenancy, and his delay in commencing suit until the termination thereof was no *laches*; and that the fact that the premises were leased in no way affected the competency or weight of the evidence as to the injuries sustained. 1873. *McKoon v. See* (51 N. Y. 300), X, 659.

16. **Where the owner and not the contractor is liable.** The owner of a city lot, having determined to build, let parts of the work to different persons — to one the excavation, to another the stone-work, to another the superstructure; while himself delivered stone, lime and sand. *Held*, that the owner, and not the contractor, was responsible for an injury to a traveler, caused by the excavation being insufficiently guarded. 1871. *Homan v. Stanley* (66 Penn. St. 464), V, 389.

17. **Erected by servant of contractor.** The defendant company were engaged in constructing their railroad, and the other defendants were contractors with the company for doing a portion of the work, under a contract which prohibited them from subletting any part of the work, without the consent of the company's engineer; required them to employ competent servants, and provided that they should immediately discharge, whenever required by the engineer so to do, any servants considered by the engineer to be incompetent. The contractors, with the consent of the company, sublet the rock excavations to S., it being understood by all parties that nitro-glycerine was to be used in blasting the rock. S. received permission of the engineer to erect on the company's land a magazine for storing nitro-glycerine necessary for the work. Afterward S., without knowledge of the defendants, stored in said magazine a quantity of nitro-glycerine belonging to, and for the benefit of another company. While a portion of this last-named nitro-glycerine was being removed, at the request of its owners, an explosion occurred, through the negligence of a servant of S., the sub-contractor, by which plaintiff's intestate was killed. *Held*, that defendants were not liable. The relation of master and servant did not exist between the servant of S. and the defendants, nor, under the circumstances, did the injury result from a nuisance, erected and maintained on the defendant company's land by their consent. 1870. *Cuff v. Newark, etc., R. R. Co.* (35 N. J. 17), X, 205.

18. **Ordinance of town council as to.** In an action against defendant, for pulling down and removing plaintiff's livery stable, an ordinance of the town council ordering such removal is no defense, the nuisance not being caused by the erection itself but by the persons who resorted there. 1869. *Miller v. Burch* (83 Tex. 206), V, 242.

19. — An ordinance of a town declaring a nuisance all intoxicating liquors kept within the limits of the town for the purpose of being sold or given away as a beverage to be drunk within said town, and directing the police officers to abate said nuisance by removing the liquors beyond the town limits, will not justify such officers in seizing and carrying away liquors until it has been determined by a court of justice that the ordinance has been violated. 1869. *Dart v. People* (51 Ill. 286), II, 801.

20. **Defect in bridge.** A canal company was required by its charter to keep in repair the bridges over the canal. Plaintiff was injured by reason of a defect in one of such bridges. *Held*, that the company was liable without evidence of actual or willful negligence on its part. 1870. *Pennsylvania and Ohio Canal Co. v. Graham* (68 Penn. St. 290), III, 549.

See HIGHWAYS; PRESCRIPTION.

OFFICE AND OFFICER.

1. **A public office** is an agency for the State, and the person whose duty it is to perform this agency is a public officer. 1872. *State v. Stanley* (66 N. C. 59), VIII, 488.

2. — An act providing for the appointment of a director for the State in all corporations in which the State is a stockholder creates an office, and the person so to be appointed is a public officer. *Ib.*

3. — The constitution prohibited judges from holding any other "office or public trust." G., a judge, was appointed by the legislature one of a committee to pass upon the genuineness of certain relics, about to be purchased by the State. *Held*, that the appointment was not in violation of the constitution, the position not being an "office." 1873. *People v. Nichols* (53 N. Y. 478), XI, 734.

4. **An alien who has not declared his intentions** to become a citizen of the United States, may be elected to a public office and may hold the same in case his disability be removed before the term of office begins. 1871. *State v. Murray* (28 Wis. 96), IX, 489.

5. **The legislature has no power** to appoint permanent officers for the full term whose duties are purely municipal. 1871. *People v. Hurlbut* (24 Mich. 44), IX, 108.

6. **Legislative control of.** The constitution fixed the term of judicial officers. The legislature passed an act establishing a new judicial district and a judge was appointed. *Held*, that a subsequent act repealing the former act and abolishing the district before the expiration of the term was unconstitutional. 1869. *Commonwealth v. Gamble* (62 Penn. St. 343), I, 422.

7. — Where the constitution provides for the office of sheriff, but does not define the powers and duties pertaining to the office, the legislature has no power to take from the office a part of the duties and functions usually appertaining to the office, and to transfer it to another office. 1871. *King v. Hunter* (65 N. C. 603), VI, 754. 1870. *State v. Brunst* (26 Wis. 412), VII, 84.

8. — But where an office is entirely the creation of the legislature, the legislature, in the absence of any constitutional restriction, may shorten the term or abolish the office. 1870. *State v. Douglass* (26 Wis. 428), VII, 87, and *note*, 90.

9. — Where the State constitution provided that certain officers should be elected at such times and in such manner as the legislature should direct; and the legislature had directed the time and manner, and an officer had been elected accordingly, *held*, that an act subsequently passed extending the term of the incumbent was unconstitutional. 1871. *People v. Bull* (46 N. Y. 57) VII, 302.

10. **An office created by a municipal corporation** may be abolished by the same authority, so as to deprive the incumbent of his salary for the unexpired term for which he was elected. 1871. *City Council of Augusta v. Sweeney* (44 Ga. 463), IX, 172.

11. **Official bonds — liability of sureties.** Where a person holds the same office for two successive terms, the sureties on his official bond for the second term are liable only for moneys actually in his hands at the time of his execution of the bond, or received by him subsequently thereto; but they are not liable for moneys reported by him, at the end of the first term as in his hands, but which in fact he had converted to his own use. 1869. *Vivian v. Otis* (24 Wis. 518), I, 199.

12. — A person who was elected treasurer of a town for five consecutive years, served the first four years without a bond, and in the fifth year he gave a bond, conditioned that, whereas he had been elected to the office for that year, if he should well and faithfully perform all the duties of his office, the bond should be void. In an action on the bond it was agreed that during the first year he falsely credited himself, in his account of that year, with money as having been officially disbursed by him, and never entered it on his subsequent accounts, but retained it. *Held*, that the money could not be treated as a balance in hand in the fifth year, and that, as the misappropriation was complete before the bond was given, the sureties were not liable. 1870. *Inhabitants of Rochester v. Randall* (105 Mass. 295), VII, 519, and *note*, 521.

13. **Damages to one wrongfully kept out of office.** A. assumed the duties of an office under an apparent claim of right, and it was subsequently judicially determined that the office belonged to B. *Held*, that B. could recover of A. the fees and emoluments received by him, while in office, after deducting the necessary expenses in earning them. 1870. *Mayfield v. Moore* (53 Ill. 428), V, 52.

14. — One wrongfully kept out of an office of profit, by a claimant thereto, is entitled to recover as damages the whole official salary, without deduction for the services of the incumbent. 1872. *Peoples v. Miller* (24 Mich. 458), IX, 181.

15. — B. and M. were opposing candidates for county treasurer. M. was declared elected by the county canvassers and entered upon the duties of the office. The election was contested, and B. was finally declared entitled to the office by the judgment of the Supreme Court. The county auditor in settling with M. allowed him the salary for the time he held the office. *Held*, that B. could not recover of the county salary for the time M. was actually in office, but that his remedy was against M. COOLEY, J., dissenting. 1870. *The Auditor of Wayne Co. v. Benoit* (20 Mich. 176), IV, 382.

16. **On the trial of an assault upon a police officer,** evidence that he was at the time of the offense acting as such officer and that he had publicly acted as such for four years previously, is sufficient to prove that he was a police officer. 1871. *Commonwealth v. Kane* (108 Mass. 423), XI, 373.

17. — On the trial of such indictment, evidence that the person assaulted was, at the time of the assault and with the defendant's knowledge, acting as a police officer, and wearing the uniform and badge of such officer, is sufficient proof that he was a police officer, to be submitted to the jury. 1871. *Commonwealth v. Tobin* (108 Mass. 426), XI, 375.

18. **Officers cannot be interested in contracts pertaining to their office.** A public officer, as a school director or trustee, will not be allowed while so

acting to take a contract relating to the matters of his office. 1870. *Pickett v. School District* (25 Wis. 551), III, 105.

19. **Misconduct in office.** A register of deeds falsely certified over his official signature, that he had examined a title, and found it unincumbered. It was no part of his official duty to make examinations or certificates of title. *Held*, that he was guilty of misconduct in office. 1872. *State v. Leach* (60 Me. 58), XI, 172.

20. **Officer de facto — acts of when valid.** A judicial officer appointed by the common council of a city, in pursuance of an act of the legislature afterward declared unconstitutional, is an officer *de facto* and a recognizance entered into before him is valid. 1870. *Brown v. O'Connell* (86 Conn. 432), IV, 89.

21. — The judgment of a judge *de facto* is valid. 1871. *State v. Carroll* (88 Conn. 449), IX, 409, and *note*, 484.

22. — An officer *de facto* is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid, so far as they involve the interests of the public and third persons, where the duties of the office were exercised: (1) Without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be. (2) Under color of a known and valid appointment or election, but where the officer has failed to conform to some precedent, requirement or condition, as to take an oath, give a bond, or the like. (3) Under color of a known election or appointment, void, because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power, or defect being unknown to the public. (4) Under color of an election or appointment by or pursuant to a public, unconstitutional law, before the same is adjudged to be such. *Id.*

23. — The acts of an officer appointed and acting in pursuance of a law are valid as the acts of an officer *de facto*, even though the law be afterward judicially declared unconstitutional. *Id.*

24. **Removal of officers.** In the absence of constitutional or legislative prohibition the power of removal is incident to the power of appointment of officers. 1870. *Newsom v. Cocks* (44 Miss. 352), VII, 686.

See ARREST; CONSTITUTIONAL LAW; EXECUTION.

ORDINANCE — *See* MUNICIPAL CORPORATION.

PARENT AND CHILD.

1. The settlement of the parents determines the settlement of an unemancipated child, and where the head of the family changes his settlement, that of his children changes with him. This is the case when, upon death of the father, the mother becomes the head of the family. 1870. *Burrell Township v. Pittsburg, etc.* (62 Penn. St. 472), I, 441.

2. — N. W., the widowed mother of A. K. W., removed from the township of Burrell, where she had a settlement, to Pittsburgh. She there leased a house, and resided in it until her death. In the meantime A. K. W. became deranged, and after the death of his mother became a pauper. *Held*, that by the act of the mother changing her settlement, that of A. K. W. was also changed, and that Burrell township was not liable for the support of the pauper. *Ib.*

3. **Although the father and mother stand upon a different footing as to their children, in relation to private parties, in regard to the public their standing is the same. *Ib.***

4. **Emancipation.** A father, though insolvent, may in good faith give his minor son his time and future earnings. 1873. *Atwood v. Holcomb* (89 Conn. 270), XII, 386.

5. **Contracts of — recovery of money paid by.** Plaintiff's infant son purchased of defendant, and paid for, tobacco pipes. Plaintiff's wife tendered back to defendant the pipes and demanded the money. *Held*, that plaintiff could recover the money. 1873. *Seguin v. Peterson* (45 Vt. 255), XII, 194.

6. **Maintenance.** There is no legal obligation on a parent to maintain his minor child independent of statutory enactment. 1870. *Kelly v. Davis* (49 N. H. 176), VI, 499.

7. **A parent cannot be charged for necessities furnished by a stranger to his minor child, except upon a promise to pay for them.** Such promise is not to be implied from mere moral obligation, nor from the statutes providing for the re-imbursement of towns; but the jury, in finding a promise, are to take into consideration all the circumstances connected with the parent's neglect, as indicating his intention, views and purposes with regard to the wants of his child. *Ib.*

8. — The only ground upon which a father can be made liable for debts contracted by a minor son is that of an express or implied agency, and, in an action against the father to recover for a purchase made by the son, it is for the jury to determine whether such agency existed. 1870. *Holt v. Baldwin* (46 Mo. 265), II, 515.

9. **A widowed mother is entitled to the services and earnings of her minor child (if it be not emancipated and have no other guardian), to the same extent as the father would be entitled to them if alive.** 1871. *Hammond v. Corbett* (50 N. H. 501), IX, 288.

10. — The minor son of plaintiff, a widow, worked for defendant, with her consent. No guardian had been appointed for said son, but he lived with plaintiff and was maintained by her. *Held*, that plaintiff could recover his wages of defendant. 1870. *Matthewson v. Perry* (37 Conn. 435), IX, 339.

11. **Commitment to house of refuge.** The rights and powers of the parent in regard to the child discussed and the point decided that a statute authorizing the commitment of a child to a house of refuge on the application of its father is unconstitutional. 1870. *People v. Turner* (55 Ill. 280), VIII, 645.

See ESTOPPEL; NEGLIGENCE; SPECIFIC PERFORMANCE; VOLUNTARY AGREEMENT.

PARDONS.

1. *Before conviction.* The power to pardon *after conviction* was vested in the governor by the constitution of Arkansas. *Held*, that the exercise of the power to pardon *before conviction*, by the legislature, was not unconstitutional. 1870. *The State v. Nichols* (26 Ark. 74), VII, 600.

2. — The constitution of Massachusetts placed in the governor the power of pardoning offenses, but provided that no pardon before conviction should avail the party pleading the same. *Held*, that a pardon granted after verdict of guilty and before sentence was valid. 1872. *Commonwealth v. Lockwood* (109 Mass. 828), XII, 699.

3. *Conditional pardon.* The governor of Virginia commuted defendant's sentence for a felony (three years in the penitentiary), to one year in jail, with the consent of the prisoner. *Held*, (1) that the governor had the constitutional authority to do such an act; (2) that the act was a conditional pardon and not a commutation, as it substituted a different punishment; (3) that the prisoner could be lawfully held to the performance of the condition. 1872. *Lee v. Murphy* (22 Gratt. Va. 789), XII, 568.

PAROL EVIDENCE—*See* EVIDENCE; WILLS.

PARTNERSHIP

I. WHAT CONSTITUTES.

II. LIABILITY OF PARTNERS TO OTHERS.

III. LIABILITY OF PARTNERS TO EACH OTHER.

IV. DISSOLUTION.

V. ACTIONS BY AND AGAINST PARTNERS.

I. WHAT CONSTITUTES.

1. *An agreement to share in the losses as well as the profits of the business* is not necessary to constitute a partnership as to third persons; an agreement to share in the profits alone is sufficient. 1871. *Manhattan Brass and Manufacturing Co. v. Sears* (45 N. Y. 797), VI, 177.

2. *An advance of money repayable out of profits.* Defendant loaned money to A, and took therefor a promissory note, payable with interest in three years, and an agreement that, in consideration of the trouble and expense in procuring the money loaned, A would pay him, defendant, such further sum annually as, with the interest, would be equal to one-sixth of the annual net profits of A's business. *Held*, that defendant was liable as partner to a business creditor of A. 1870. *Parker v. Canfield* (37 Conn. 250), IX, 317.

3. *Where two persons entered into a contract jointly, for the keeping of sheep for certain shares of the wool, it was held*, that they would be so far regarded as partners as that a settlement made by one of them, in the name of both, would bind both. 1871. *Stapleton v. King* (38 Iowa, 28), XI, 109.

II. LIABILITY OF PARTNERS TO OTHERS.

4. A partner has no authority to bind his firm by an instrument under seal, even where the seal is not essential to the validity of the instrument. 1870. *Schmertz v. Shreve* (62 Penn. St. 457), I, 439.

5. — But where the contract is independent of the instrument, and has been executed on behalf of the firm, the making for the purposes of evidence of an instrument, under seal, by a partner, will not vitiate such contract. *Id.*

6. Bond executed by one partner. In a bond given for the purpose of obtaining a dissolution of an attachment of partnership property, both partners were named as principals, but the bond was executed by only one of them, in the name of the firm. *Held*, that it could not be enforced against a surety without proof of the assent of the other partner to its execution. — *WELLS, J.*, dissenting. 1871. *Russell v. Annable* (109 Mass. 72), XII, 665.

7. Liability of one suffering another to use his name. One Harrington gave the plaintiff a note signed "Hill & Co. by Harrington." There never existed any such firm as "Hill & Co.," nor were Hill and Harrington ever partners; but some time before the note was given, Hill was informed that Harrington was using his name, and he thereupon told Harrington that he "must not use that name to injure him," and Harrington said he would not. Hill did not know of the giving of the note to plaintiff, nor did plaintiff know of the previous use by Harrington of Hill's name. *Held*, that Hill was liable on the note. 1872. *Smith v. Hill* (45 Vt. 90), XII, 189.

8. Statute of Limitations—renewal by one partner—bankruptcy. In an action against H. and B., makers of a partnership promissory note, it appeared that the partnership had been dissolved soon after the note was made. The defense was, that the claim was barred by the statute of limitations, and that the defendant B. had received his discharge in bankruptcy under the United States law. *Held*, (1) that the admissions and acknowledgment of the note by B., made after the dissolution of the partnership but before the statute of limitations had taken effect, removed the bar of the statute as to both H. and B.; (2) that evidence of an admission made on Sunday of a part payment of the note on a week day was admissible; (3) that, as it appeared that the discharge in bankruptcy had been obtained by fraud, it was no bar to this action, notwithstanding it had not been set aside in a regular proceeding for that purpose. 1869. *Beardsley v. Hall* (36 Conn. 270), IV, 74.

9. Fraud. A partner made his promissory note and indorsed it in the firm name without his copartner's knowledge or consent, in payment of an individual debt to defendant, who took the note with knowledge of the facts, and in order to bind the firm, indorsed it before maturity to a *bona fide* holder for value. The note was paid out of the firm assets. *Held*, that defendant was guilty of a fraud for which he was liable in damages; but that the fraud was not upon the firm, but upon the individual partners, who did not consent to the indorsement of the note, and that the cause of the action against defendant did not pass to plaintiffs by a general assignment of the assets of the firm, or by a conveyance to plaintiffs of the firm interest of a partner injured by the fraud. 1872. *Calkins v. Smith* (48 N. Y. 614), VIII, 575.

10. **Mortgage of individual interest — sale under — firm creditors.** One of three partners, with the consent of the other partners, mortgaged his interest in the firm property, to secure an individual debt of plaintiff, who sold the property under the mortgage and bought it in himself. Another person at the same time and in like manner became possessed of another partner's interest. After the execution of the mortgage, but before the sale, the third partner sold his interest to a stranger. After these transactions, a judgment was recovered against the firm on firm debts, and execution was levied on the property which had belonged to the firm, by the defendant as sheriff. In an action of trover against the sheriff, *held*, that plaintiff could not recover, as he acquired no title by the sale under the mortgage as against firm creditors. 1873. *Menagh v. Whitwell* (52 N. Y. 146), XI, 683.

III. LIABILITY OF PARTNERS TO EACH OTHER.

11. **Individual services.** A partner who neglects and refuses, without reasonable cause, to perform personal services which he has stipulated to render the partnership, is liable to account to the firm for the value of the services in the settlement of the partnership accounts. 1871. *Marsh's Appeal* (69 Penn. St. 30), VIII, 206, and *note*, 212.

12. — Where several persons entered into articles of agreement, forming a partnership, and one of the partners, by *verbal* agreement, assumed to render certain services which he neglected to perform; *held*, that he was chargeable with the value of his services on the settlement of the firm accounts. *Id.*

13. **Real estate** was purchased by G. S. and J. G. in their individual names. Subsequently they formed a partnership with J. S., under the name of G. S. & Co. The cash payment, on account of purchase-money of the real estate and the first installment, were paid before J. S. became a partner. He acquiesced in the subsequent appropriation of the firm funds to the payment of the balance, and to expenditures made in improvements, knowing that it stood in the individual names of G. S. and J. G. It was agreed by parol that J. S. was to have one-third of the real estate as soon as there was a final settlement. *Held*, that there was no resulting trust for the partnership, and the real estate having been sold under execution, the fund arising from the sale should go to the individual creditors of G. S. and J. G., instead of the creditors of the firm. 1871. *Lefevre's Appeal* (69 Penn. St. 122), VIII, 229.

14. **Interest on settlement.** In the settlement of partnership accounts between partners, there is no general rule as to interest, but the allowance or refusal thereof depends upon the circumstances of each case. 1869. *Gyger's Appeal* (62 Penn. St. 73), I, 382.

15. **Judgment against individual partner.** Where land had been conveyed to a partnership by a deed, expressing on its face that it is to be holden as partnership stock, a judgment, subsequently entered against an individual member, is not a lien upon it, or any interest in it, so as to preclude the firm from disposing of the property and making a title to the purchaser clear of such incumbrance. 1872. *Meily v. Wood* (71 Penn. St. 488), X, 719.

16. — W. conveyed land to M. and others, partners under the firm name M. & Co., by deed declaring on its face that such land was to be held by the grantees "as partnership property." Subsequently, a judgment was recovered by W. against one of the partners for his proportion of the purchase-money, and that partner conveyed his interest in the partnership to his copartners, who conveyed the whole property to others. *Held*, that such judgment was not a lien upon the land in the hands of the terre-tenants. *Id.*

IV. DISSOLUTION.

17. **By war.** A commercial copartnership between a resident of the north and a citizen of the south was dissolved by the war of the rebellion. 1870. *Woods v. Wilder* (43 N. Y. 164), III, 684.

18. **The bankruptcy of one partner dissolves the copartnership, and the assignee of the bankrupt and the solvent partner become tenants in common or joint owners of the partnership property and must unite in suits respecting the same.** 1871. *Halsey v. Norton* (45 Miss. 703), VII, 745.

19. **Good-will.** A partner who is appointed by a firm to settle up the business of the firm after dissolution, and who continues the business of the firm upon his own account, is not liable to account to the firm for the value of the "good-will" thereof. 1869. *Gyger's Appeal* (62 Penn. St. 78), I, 863.

20. — **Exclusive right in the business and sole ownership of it as against others are the criteria of property in good-will.** *Id.*

21. **A promissory note given after dissolution of a partnership, by one partner, without the authority of the other, does not bind such other, although given in the partnership name and for a partnership debt.** 1869. *Haddock v. Crocheron* (82 Tex. 276), V, 244.

22. — **After the dissolution of a partnership, A., one of the partners, without authority, gave a new note in the name of the firm, in renewal of an old six per cent partnership note, and, without intent to defraud, made it to bear ten per cent interest, and included it in an individual liability of B., another partner. D., another partner, subsequently promised to pay the new note, supposing it to be a simple renewal of the old note. In an action on the new note, held, that, as the considerations were severable, D. was liable for the amount of the old note, with interest at six per cent.** 1870. *Wilson v. Forder* (20 Ohio St. 89), V, 637.

V. ACTIONS BY AND AGAINST PARTNERS.

23. **Two partners cannot maintain a joint action of account against a third, to recover their share of the net profits received by him, in the absence of an independent promise or of an adjustment of the partnership matters.** 1871. *Farrar v. Pearson* (57 Me. 561), VIII, 439.

24. **The admissions of a partner, made while engaged in the adjustment of unsettled partnership business, after the dissolution of the firm, may be given in evidence to charge the other partners in relation to such business.** 1872. *Feigley v. Whitaker* (22 Ohio St. 606), X, 778.

25. Execution against — levy — effect of. Where the creditors of a partnership have levied their execution on lands belonging to one of the partners, and their title has become absolute by lapse of the time prescribed by statute, a creditor of the individual partner cannot defeat their title by levying his attachment or execution on the same lands. 1868. *Boulker v. Smith* (48 N. H. 111), II, 189.

See INSURANCE; MASTER AND SERVANT.

PARTY-WALL.

1. Increasing height. Although land covered by a party-wall remains the several property of the owner of each half, yet the title of each owner is qualified by the easement to which the owner is entitled; and the right of either to increase the height of the party-wall, when it can be done without injury to the adjoining building, and the wall is of sufficient strength to safely bear the addition, is, necessarily, included in the easement. But the party making the addition does it at his peril; and, if injury results, he is liable for all damages. He must insure the safety of the operation. 1872. *Brooks v. Curtis* (50 N. Y. 639), X, 545.

2. Construction of deed. The owner of two adjoining lots conveyed one to B. and the other to S., each deed containing an agreement that the division wall between the houses then standing should, notwithstanding a deviation from the true dividing line, remain undisturbed "so long as the said houses shall endure." *Held*, that the true construction of the deeds was that whenever the grantee, or a person claiming under him, should find it necessary, either by reason of the decaying or dilapidated condition of his house, or its unfitness for the locality, to remove it and to erect in its stead a more substantial structure, suitable to the place, and required for the business wants and purposes of the locality, he had the right to remove the old division wall and erect a new building on his lot, extending to the true dividing line. 1871. *Glenn v. Davis* (35 Md. 203), VI, 389.

PASSENGER.

I. RIGHTS AND DUTIES OF — *See* CARRIER.

II. TAX ON — *See* CONSTITUTIONAL LAW.

PATENT.

1. A State court may decide as to the validity of a patent when the question arises collaterally, as in an action on a promissory note given for a patent right. 1869. *Nash v. Lull* (103 Mass. 60), III, 435.

2. — So a state court has jurisdiction of an equitable action on a bond conditional upon the validity of a patent. 1872. *Middlebrook v. Broadbents* (47 N. Y. 448), VII, 457.

3. — So a state court has jurisdiction of an action to rescind a contract for the sale of a patent right, brought on the ground of the false and fraudulent representations of the vendor as to its value. 1871. *Page v. Dickerson* (38 Wis. 694), IX, 532.

4. — So a state court has jurisdiction to compel performance of an agreement to assign a patent. 1871. *Binney v. Annan* (107 Mass. 94), IX, 10.

See DAMAGES.

PAUPER — See SETTLEMENT.

PAYMENT.

1. **Legal tender.** A note payable "in gold coin or the equivalent thereof in United States legal tender notes" is discharged by payment of legal tender notes, dollar for dollar. 1870. *Killough v. Alford* (32 Tex. 457), V, 249,

2. **The maker of a note due a bank has a right to tender in payment of such note, as equivalent to gold and silver coin, the bills issued by the bank.** 1878. *Blount v. Windley* (68 N. C. 1), XII, 616.

3. **By note.** A promissory note given for a debt does not operate as an extinguishment or payment of the debt, unless it be so accepted by the creditor, and a note in renewal is but a continuation of the debt, and if not paid at maturity the creditor may sue upon it, or upon the original debt. 1871. *Moss v. Trice* (21 Gratt. 556), VIII, 609.

4. **By note of third party.** The defendants who were indebted to the plaintiffs tendered the note of third parties, which was accepted in payment of the indebtedness. At the time of such acceptance the makers of the note were insolvent, but both plaintiff and defendant were ignorant of the fact. *Held*, no payment and that plaintiff was entitled to recover the amount of indebtedness for which the note had been given. 1870. *Roberts v. Fisher* (43 N. Y. 159), III, 680.

5. — Where the vendor of goods receives from the vendee, at the time of the delivery, the note or bill of a third person, the presumption is that the note or bill was accepted in payment and satisfaction, unless the contrary be expressly proved by the vendor. 1871. *Gibson v. Tobey* (46 N. Y. 637), VII, 397.

6. — Plaintiff sold a number of hogs to defendant, to be paid for on delivery. On the delivery, defendant's agent, who made the purchase, said he would have to go to the bank to get the money to pay for the hogs, and asked plaintiff which he preferred, the currency or a draft. Plaintiff replied that he preferred a draft, and permitted defendant's agent to ship the hogs with the understanding that the draft should be procured as soon as possible. The draft of a third person was procured and accepted by plaintiff, on the same day, without defendant's indorsement. The draft was dishonored; and, subsequently, plaintiff tendered it to defendants and demanded the money, which was refused; whereupon plaintiff brought action for the contract price. *Held*, that the draft must be deemed to have been received in payment, and that the action could not be maintained. *Id.*

7. — The plaintiff sold and delivered certain goods to the defendant for a stipulated price, a part of which was paid in cash, and agreed to accept in payment of the balance, a note of a third party, and run the risk of its being

paid, relying upon the representations of the defendant, that the note was good, and would be paid at maturity. The note was not paid at maturity, and proved worthless, the drawers having failed several days before it became due. On the day of its maturity the plaintiff notified the defendant of its non-payment, and of the failure of the makers, and demanded of him payment of the balance due on the goods sold. *Held*, that if the agreement to accept the note as payment was induced by the fraudulent misrepresentations of the defendant, such fraud rendered the receipt given by the plaintiff invalid, and he had the right to affirm the sale and sue in *assumpsit* for the price of the goods. 1872. *Hoopes v. Strasburger* (37 Md. 390), XI, 588.

8. In Confederate money. In an action by the payee of a promissory note against the maker, it appeared that the note was made in 1859, and that in 1863 the plaintiff voluntarily surrendered the note to the defendant, and received the amount called for in Confederate money. *Held*, that plaintiff could not recover, although the money received in payment was illegal and worthless. 1869. *Ritchie v. Sweet* (32 Tex. 833), V, 245.

9. A voluntary payment is irrecoverable by action. 1871. *Gibson v. Bingham* (43 Vt. 410), V, 289.

10. Part in satisfaction. There is no consideration in law for a promise by a creditor that part of a debt shall be received in satisfaction of the whole. 1869. *Oberndorf v. Union Bank* (81 Md. 120), I, 31.

11. Satisfaction. The acceptance of a note of \$40 in satisfaction of a note of \$60, and the simultaneous surrender of the larger note is a full discharge thereof. 1871. *Draper v. Hitt* (43 Vt. 439), V, 292.

12. A tender made subject to the condition that if the amount offered is accepted, it will be in full payment of all claims, is invalid. 1871. *Draper v. Hitt* (43 Vt. 439), V, 292.

13. Application of. A creditor receiving payments without any direction as to application, may appropriate them to any debt not illegal, even if it would not support an action: *e. g.*, a debt on which no action would lie by reason of the statute of frauds. 1868. *Haynes v. Nice* (100 Mass. 327), I, 109.

14. — The purchaser of real estate, subject to a mortgage, as a part of the consideration, assumed the payment of a portion of the mortgage debt, and afterward made a general payment on the mortgage debt. *Held*, that the amount so assumed was the personal debt of the purchaser, and that the law will apply his general payment to discharge that portion of the mortgage debt. 1871. *Snyder v. Robinson* (35 Ind. 311), IX, 738.

15. After suit commenced — costs. Where one pays a debt after service of a writ on him, and before trial, the plaintiff cannot proceed for costs. 1872. *Buell v. Flowers* (39 Conn. 462), XII, 414.

See BILLS AND NOTES; INSURANCE.

PENALTY — *See* CRIMINAL LAW.

PHYSICIANS.

1. **Skill and care.** The law requires of physicians and surgeons, in the treatment of their patients, the use of ordinary skill and diligence only, the average of that possessed by the profession as a body, and not of the thoroughly educated only; having regard to the improvements and advanced state of the profession at the time of the treatment. 1872. *Smother v. Hanks* (84 Iowa, 286), XI, 141, and *note*, 146.

2. — The civil responsibility of physicians and surgeons in the treatment of their patients is not governed by the same rule of law that apply to mechanics and artisans in the execution of their work. 1872. *Almond v. Nugent* (84 Iowa, 800), XI, 147.

3. **Sale of good will.** Plaintiff, a physician, being about to remove from the town where he lived, agreed with defendant, also a physician, in consideration of \$500, to recommend him to his patients, and to use his influence to induce them to employ him. *Held*, that the agreement was lawful, and not against public policy. (PARK and SEYMOUR, JJ., dissenting.) 1872. *Hoyt v. Holly* (29 Conn. 826), XII, 890.

4. **Selection of physician by one injured.** One who has received personal injuries through the negligence of another is only bound to use reasonable and ordinary care in the selection of a physician, and the damages will not be reduced because the most skillful medical aid was not secured. 1871. *Collins v. Council Bluffs* (82 Iowa, 824), VII, 200.

5. **"Family physician."** The term "family physician" as used in a policy of life insurance, *held*, to mean the physician who usually attends and is consulted by the members of a family in the capacity of a physician, whether or not he usually attended on or was consulted by the insured himself. 1871. *Price v. Phoenix Mutual Life Insurance Co.* (17 Minn. 497), X, 166.

PLEADING.

1. **A plea justifying an arrest on suspicion of felony, without a warrant,** should set forth the grounds of the suspicion, so that the court may judge of them, and determine whether they afford probable cause or not. 1865. *Wade v. Chaffee* (8 R. I. 224), V, 572.

2. **Where the complaint is for fraud,** the plaintiff cannot recover for a breach of contract. 1872. *Ross v. Mather* (51 N. Y. 106), X, 562.

3. — A complaint alleged that the defendant, on selling to the plaintiff a horse which was lame, warranted and falsely and fraudulently represented that the lameness was in his foot, and nowhere else, and would soon be well; that the plaintiff, relying upon such warranty and representations, and believing them to be true, purchased the horse; that the horse was not lame in his foot, but in his gambrel joint, and was of little value, which the defendant well knew. The plaintiff proved a warranty, and breach thereof, but gave no evidence tending to prove fraud, or any intention to deceive. *Held*, that the basis of the action was fraud, not a breach of warranty; and that the plaintiff could not recover upon proof of the latter only. *Id.*

Complaint in an action against a married woman on her note — See MARRIAGE.

PLEDGE—PRIVATE ROADS.

PLEDGE — *See* BAILMENT; STOCK CERTIFICATES.POLICE OFFICER — *See* ARREST; OFFICER.POLICE POWER — *See* CONSTITUTIONAL LAW.

POSTMASTER.

Right of, to take public property from his predecessor. 1871. *Sterling v Warden* (51 N. H. 217), XII, 80.

POST-NUPTIAL CONTRACT — *See* MARRIAGE.

PRE-EMPTION.

1. **Decision of land office conclusive.** M. purchased government land, but B. soon entered upon it as a pre-emptor, claiming to have commenced a settlement and improvement on it previous to the purchase by M. The pre-emption claim was contested, but it was held good by the land officers. It having been appealed to the secretary of the interior, *held*, that the decision of the land officers was conclusive as to the right of pre-emption. 1870. *Robbins v. Bunn* (54 Ill. 48), V, 75.

2. **A mortgage upon government land given by the pre-emptor, after an entry and certificate received, but before patent issued, is not invalid under the twelfth section of the pre-emption law of 1841, providing that "all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void," the words, "the right hereby secured," being construed to mean simply the right of pre-emption.** *Ib.*

PRESCRIPTION.

An adverse user which is known to have originated without right within the memory of persons now living, will not alone and of itself legitimate a public nuisance, or bar the public of their rights. 1870. *State v. Franklin Falls Co.* (49 N. H. 240), VI, 518.

PRESUMPTION.

Laws of another State. In the absence of evidence the presumption is that the laws of another State conform in substance to the general principles of the common law. 1869. *Ellis v. Mason* (19 Mich. 186), II, 81.

As to boundary in a deed — See BOUNDARY.

PRINCIPAL AND AGENT — *See* AGENCY.

PRIVATE ROADS.

The legislature cannot authorize the taking of private lands for a private road without the owners' consent. 1869. *Osborn v. Hart* (24 Wis. 89), I, 161.

PRIVILEGED COMMUNICATIONS.

To treasury department. In an action for falsely and maliciously representing to the treasury department of the United States that the plaintiff was intending to defraud the revenue, the plaintiff filed interrogatories requiring the defendant to answer whether he did not inform the department that he knew or believed that plaintiff was intending to commit a fraud upon the revenue. *Held*, that any communications of the kind to the department were privileged in the sense that their disclosure will not be compelled or permitted without the assent of the government, and that defendant would not be compelled to answer the interrogatories. 1872. *Worthington v. Scribner* (109 Mass. 487), XII, 786.

See SLANDER AND LIBEL; WITNESS.

PROBABLE CAUSE—*See MALICIOUS PROSECUTION.*

PROMISE.

1. A promise lacking mutuality at its inception becomes binding upon the promisor after performance by the promisee. 1871. *Willeys v. The Sun Mutual Ins. Co.* (45 N. Y. 45), VI, 81.

2. The consideration of a promise may be any loss, trouble or inconvenience to, or charge upon, the promisee; it is not essential that it should also be a benefit to the promisor. 1871. *Wells v. Mann* (45 N. Y. 327), VI, 98.

See SPECIFIC PERFORMANCE.

PROTEST—*See BILLS AND NOTES.*

PROXIMATE AND REMOTE CAUSE.

1. A warehouse, situated near the railroad track, was set on fire by sparks from one of defendant's locomotives. The burning warehouse communicated fire to plaintiff's hotel (situated thirty-nine feet distant), whereby it was consumed. *Held*, that the defendant was not liable for the destruction of the hotel, or property therein, by reason of the injury being too remote. 1870. *Pennsylvania Railroad v. Kerr* (62 Penn. St. 353), I, 431.

2. Sparks from defendant's engine set fire to a building from which the fire was communicated to plaintiff's building. *Held*, in an action to recover damages, that it was for the jury to determine whether the cause of the injury was too remote. 1870. *Toledo, etc., R. R. Co. v. Pindar* (53 Ill. 447), V, 57; *Kellogg v. The Chicago & N. W. R. R. Co.* (26 Wis. 223), VII, 69; *Webb v. Rome, etc., R. R. Co.* (49 N. Y. 420), X, 489.

3. Defendant mounted a pile of stones in the street to make a speech; a crowd of persons gathered about him, some of whom also got upon the stones and broke them. In an action by the owner of the stones, *held*, that whether defendant's act was the proximate cause of the injury was a question for the jury. 1872. *Fairbanks v. Kerr* (70 Penn. St. 86), X, 664.

4. Where a man cuts off a hose through which firemen are throwing a stream upon a burning building and thereupon the building is consumed for want of water, his act is regarded as the direct and efficient cause of the injury. 1872. *Metallic Compression Co. v. Fitchburgh R. R. Co.* (109 Mass. 277), XII, 689.

RAILROAD.

- I. RIGHT OF WAY.
- II. LAND DAMAGES.
- III. CONSTRUCTION OF ROAD.
- IV. MORTGAGE ON ROAD.
- V. RIGHTS AND LIABILITIES OF RAILROAD.
 - 1. *As to fences.*
 - 2. *As to animals on the track.*
 - 3. *For defective depot.*
 - 4. *As carriers of goods — See CARRIERS.*
 - 5. *As carriers of passengers — See CARRIERS.*
 - 6. *As to employees — See MASTER AND SERVANT.*
 - 7. *For injuries to persons or property — See NEGLIGENCE.*
 - 8. *For fires communicated by locomotive — See NEGLIGENCE.*
- VI. MISCELLANEOUS PRINCIPLES.
- VII. MUNICIPAL AID TO RAILROAD — *See CONSTITUTIONAL LAW.*
- VIII. RAILROADS IN STREETS — *See MUNICIPAL CORPORATIONS.*

I. RIGHT OF WAY.

1. **Location of road — re-location — taking of land.** A railroad corporation authorized by its charter to take the lands of private parties for its road, does not exhaust its power by once locating its road; but, in case of necessity, may re-locate it and take private property for the purpose. 1869. *Mississippi & Tennessee R. R. Co. v. Devaney* (42 Miss. 555), II, 608.

2. **Lands belonging to a municipal corporation** were reserved and set apart for the public use. *Held*, that the construction of a railroad thereon was a "public use" within the meaning of the reservation. 1870. *Cook v. Burlington* (30 Iowa, 94), VI, 649.

3. **Taking of lands — rights therein.** Where a railroad company entered upon land in good faith under the belief that it had title thereto, *held*, that it was not a naked trespasser though the title was in fact in another; and that it was entitled to all legal protection to its improvements upon the premises given by the statute to the parties in possession under color of title. 1869. *Mississippi & Tennessee R. R. Co. v. Devaney* (42 Miss. 555), II, 608.

4. **Taking land for a depot.** The statute authorized a railroad company to take, by right of eminent domain, any real estate that it may require "for the purpose of its incorporation and for the purpose of running and operating its road." *Held*, that the company could take land for depots, and that the selection of the land and location of the buildings were within the discretion of the company. 1871. *New York and Harlem R. R. Co. v. Kip* (46 N. Y. 546), VII, 385.

5. **Conversion of premises from corporate purposes.** Where a railroad corporation takes possession of premises, under the right of eminent domain for railroad purposes, the occupation of buildings upon the premises, for the general purposes of trade and mechanical or manufacturing purposes by lessees of the corporation, is a conversion of the premises from the corporate pur-

poses, and a writ of entry will lie against the corporation by the original owners, in which they are entitled to judgment establishing their title as owners in fee, subject to the valid easement of the corporation, and for damages or meane profits for the wrongful use of the premises. 1870. *Proprietors v. Nashua, etc., Railroad Company* (104 Mass. 1), VI, 181.

6. **Taking of land — what is — land damages.** A railroad company claiming authority from the legislature, cut through a ridge near plaintiff's lands, and as a result thereof, such lands were flooded by freshets when they had formerly been protected from them. *Held*, that this was taking of the property of plaintiff within the meaning of the constitution, and that the legislature could not authorize the same without providing for compensation, and that due care and prudence in the construction of the road where the barrier was broken down would not protect the company. 1871. *Eaton v. Boston, Concord, etc., R. R. Co.* (51 N. H. 504), XII, 147.

7. **Along tide water.** A railroad company cannot construct its road along the shore of tide water, below high-water mark, without a specific grant from the State. 1869. *Stevens v. Patterson, etc., R. R. Co.* (34 N. J. 532), III, 269.

8. **An act of the legislature authorized "all railroad companies upon equal terms to run their locomotive and cars over the track" of the Union Railway Company of Baltimore.** *Held*, that this provision did not confer upon such railroad company the power to construct lateral railroads connecting with other railroads running to Baltimore. 1871. *Baltimore, etc., Turnpike Company v. Union Ry. Co.* (35 Md. 224), VI, 397.

9. **Failure to record survey.** Where a land owner agrees with a railroad company upon the compensation to be made for lands over which the road is laid, and permits the company to take possession of the land and construct their road thereon, it is too late for him to take advantage of the omission of the company to record the survey, as required by its charter. 1869. *Troy & Boston Railroad Co. v. Potter* (42 Vt. 265), I, 325.

10. **Right to exclusive possession of way.** The owner of the land adjoining a railroad, and from whom the land was taken for the construction and use of the road, under the power conferred by the charter, has no right to enter upon the land after it is so taken, and while it is being so used, and cut and take therefrom the herbage and other products of the soil growing thereon. 1869. *Troy & Boston R. R. Co. v. Potter* (42 Vt. 265), I, 325.

II. LAND DAMAGES.

11. **Land damages — elements of.** In assessing the damages occasioned to the owner of a message by the taking of his lands for the construction of a railroad, the depreciation of value arising from the proximity of the road, and the running of trains should be considered only so far as is due to proximity, secured by means, and as a result of such taking. 1869. *Walker v. Old Colony and Newport Railroad Co.* (108 Mass. 10), IV, 509.

12. — The effects of noise, smoke, soot and the like, are not distinct elements of damage, but, in estimating the depreciation in value of the entire tract, these causes may be considered, in so far as the annoyance and inconvenience

nience arising therefrom are increased by reason of, and as an incident to the taking of a part of the land. *Ib.*

13. — The turning of surface water upon land, by the embankment of a railroad, is a proper element in estimating the damage to the land owner by the construction of a railroad. *Ib.*

14. From what time damages computed. A railway company entered upon land and erected buildings. Two years thereafter it began proceedings to appropriate such land to its use. *Held*, that the owner of the land was entitled to compensation for its value, with the improvements thereon at the time the proceedings to appropriate were instituted, and not at the time the land was entered. 1871. *Graham v. Connersville, etc., R. R. Co.* (36 Ind. 463), X, 56.

15. A person released a railroad corporation from all claim of damages, on account of the construction of the road over his land. *Held* not to operate against his claim for damages resulting from the roads being built over the land of another. 1871. *Eaton v. Boston, Concord, etc., R. R. Co.* (51 N. H. 504), XII, 147.

III. CONSTRUCTION OF ROAD.

16. Right to use material removed from land. A railroad company, or any contractor employed by them to build a railroad, may use any material removed by them in grading the road, either in the adjacent, or, it seems, in other localities, but they have no right to sell such material to third parties. 1867. *Aldrich v. Drury* (8 R. I. 554), V, 624.

17. Diversion of water-course—damages. Under a railroad charter conferring the power to acquire by condemnation land for the construction of the road, the company has the right to divert a stream of water flowing across the line of their road. This right does not depend upon an express grant to be made and specified in the inquisition itself, but may be acquired by condemnation of the land duly confirmed, and payment or tender of the damages awarded; and proof *de hors* the inquisition is admissible to show that the attention of the jury of inquest was directed to the intended diversion at the time of taking and before they signed the inquisition. If the attention of the jury was thus directed to such diversion, and the same was made within the lines of the land condemned for the construction of the road, the owner of the land through which the road passes has no remedy, either at law or in equity, for any injury that may result therefrom. 1870. *Baltimore and Potomac Railroad Co. v. Magruder* (34 Md. 79), VI, 310.

18. Crossing and altering highways, etc. By the first section of a city ordinance a railway company was authorized to build its road over and across certain streets of the city, *provided*, it should be built "on the grade of the city." By the second section the company was authorized to build a bridge across a river running through the city. *Held*, that the clause in the first section relative to grade did not prohibit the company from erecting suitable embankments, above grade, as approaches to the river; and that the company was not liable to a lot owner for damages resulting from the erection of the embankment. 1870. *Slatten v. Des Moines Valley Railroad Co.* (29 Iowa, 148), IV, 205.

19. **Crossing other railroads or turnpikes.** The legislature of a State, in the exercise of the right of eminent domain, can authorize and empower a railroad corporation to cross another railroad or turnpike road, on making compensation; and the exercise of such a right, whatever damage may result therefrom, cannot be considered as a condemnation of a franchise, nor the impairment of a contract, within the meaning of the United States constitution. 1871. *Baltimore & Haver-de-Grace Turnpike Co. v. Union Railway Co.* (85 Md. 224), VI, 397.

IV. MORTGAGE OF ROAD.

20. **What mortgage covers.** Where a railroad company, in pursuance of a power in its charter to borrow money and to execute the required securities therefor, executed a mortgage on its road, etc., and on "all future right thereto and interest therein to be acquired." *Held*, that such mortgage was a valid lien on all lands over which the road was at the time located, though the title thereto or right of way was not acquired until subsequently; and that it was prior to the lien of the vendor of such right of way for the purchase-money. 1869. *Pierce v. Milwaukee, etc., Railroad Co.* (24 Wis. 551), I, 208.

21. — In pursuance of a statute authorizing a railroad company to mortgage "all or any part of their road, property, rights, liberties and franchises," the company executed and delivered a mortgage to certain persons, trustees of "all the road, property, rights, liberties, privileges, corporate franchises, incomes, tolls and receipts, now held or hereafter to be acquired." *Held*, that the mortgage was authorized by the statute and gave a valid lien on the engines cars, furniture of stations, etc., required for the transaction of the business of the company, whether owned at the date of the mortgage or subsequently acquired. 1870. *Philadelphia, Wilmington & Baltimore Railroad Co. v. Woolpper* (64 Penn. St. 366), III, 596.

V. RIGHTS AND LIABILITIES OF RAILROAD COMPANIES.

1. *As to fences.*

22. **The obligation upon railroad companies to build a fence along their road** only extends to the owner or rightful occupier of the adjoining fields, and not to mere trespassers there. 1869. *Bemis v. Connecticut, etc., Railroad Co.* (42 Vt. 375), I, 339.

23. A railroad company not required by its charter to make or rebuild fences along its track, was afterward, by a statute, directed to repair fences along its line "destroyed by fire caused by the running of trains or by the employees of the road." *Held*, a valid exercise of the police power of the State. 1871. *Pennsylvania Railroad Co. v. Rüblet* (66 Penn. St. 164), V, 360.

24. Where a statute makes it the duty of railroad companies to fence their roads, and to keep their fences in repair, and also declares that such companies shall be liable for all injuries to animals arising from a neglect to perform this duty, *held*, (1) that where such fences get out of repair, through some accident or event beyond the control of the company, and repairs are made with reasonable diligence, the company will not be liable for injuries to animals straying upon the track, notwithstanding that the statute makes the liability absolute;

2) that in such cases, reasonable diligence in making repairs is a high degree of diligence, exceeding that which men in general exercise in their own affairs. 1870. *Antisdel v. The Chicago and North-western Railway Co.* (26 Wis. 145), VII, 44, and *note*, 47.

2. *As to animals on the track.*

25. **Animals killed by cars.** In an action against a railroad company, in favor of the owner of an animal killed, while unlawfully on the track, by a train of cars running at the usual rate of speed, the mere fact that the speed of the train was not checked while approaching the animal does not tend to show want of ordinary care. Nor does the mere fact that the engineer did not discover the animal until the engine was close to it show want of such care. 1869. *Bemis v. Connecticut Railroad Co.* (43 Vt. 375), I, 339.

26. — In such case, the first duty of the company and its servants is to provide for the safety of the passengers and property on the train. Its next care may be for the safety of its own property; and, lastly, it must exercise such a degree of care as is consistent with the prior objects, to avoid injury to the trespasser. *Id.*

27. — Although a railroad company has the right to the free and unobstructed use of its track, and the paramount duty of its employees is the protection of the train and the passengers and property therein; yet such employees are bound to use ordinary care and diligence, so as not *unnecessarily* to injure the property of others. Thus where horses strayed from the inclosure of their owners upon a railroad track, and were killed by a passing train: *Held*, that if the servants of the company in charge of the train could, by the exercise of ordinary care, have seen and saved the horses they were bound to do so: and that the fact that the road was fenced at the place of collision did not excuse the engineer from keeping a lookout ahead of the train. 1871. *Cincinnati & Zanesville R. R. Co. v. Smith* (22 Ohio St. 227), X, 729, and *note*, 732.

3. *For defective depot.*

28. **A railroad company negligently left its depot platform in a defective condition.** A hackman, while carrying a passenger to the depot for transportation, stepped, without fault, into a cavity in the platform, and was injured. *Held*, that the company was liable, and the liability was the same, notwithstanding the platform was within the limits of the highway. 1871. *Tobin v. Portland, Saco and Portland R. R. Co.* (59 Me. 183), VIII, 415, and *note*, 417.

VI. MISCELLANEOUS PRINCIPLES.

29. **Legislative control of.** A statute required a railroad company, whose charter was subject to amendment by alteration or repeal, to establish a flag station at a certain point on its line, to erect there a station house and to stop its trains, *held*, not in violation of the constitution of the United States. 1869. *Commonwealth v. Eastern R. R. Co.* (103 Mass. 254), IV, 555.

30. **The rolling stock of a railroad company is personal property, and, as such, liable to be seized and sold for the collection of a tax against the company.** 1873. *Randall v. Elwell* (52 N. Y. 521), XI, 747; see *note*, 751.

31. **When piers and abutments not realty.** A railroad company, in the construction of a bridge upon its road, built stone piers and abutments on lands over which it had acquired the right of way. It subsequently abandoned the construction of the railroad at that place. *Held*, that the piers and abutments did not pass to the land owner. *Held*, also, that the fact that, upon such abandonment, the owner of the land had been allowed to take possession of that portion embraced in the right of way, and hold it for a period less than was required to extinguish the easement, did not, of itself, imply a relinquishment, by the railroad company, of its right to enter and remove the piers, etc. 1872. *Wagner v. Cleveland, etc., R. R. Co.* (32 Ohio St. 563), X, 770.

32. **Where the trustees, under a second mortgage of a railroad, have taken possession of it, and have afterward by a bill in equity obtained a decree of foreclosure with a provision for a sale of the railroad in accordance with the power conferred by the mortgage, and have themselves become the purchasers as they were authorized to do by the decree, and to hold the property in trust for the bondholders, and they continued to keep possession of the railroad and operate it as such trustees, it was held**, that they were liable as common carriers for the loss of goods received for transportation. 1869. *Barter v. Wheeler* (49 N. H. 9), VI, 484.

33. **In an action by plaintiff against a railroad company for injuries sustained in consequence of a broken rail, the mere fact that a train had just passed over the road is not sufficient evidence to raise a question for the jury as to whether the rail was broken before plaintiff's train reached it.** 1871. *McPadden v. The N. Y. Cent. R. R. Co.* (44 N. Y. 478), IV, 705.

34. **A railway company is not bound to change its machinery in order to apply every new invention or supposed improvement in appliances; and an employee who consents to operate the machinery already provided by the company, knowing its defects, does so at his own risk.** 1870. *Wonder v. Baltimore and Ohio R. R. Co.* (83 Md. 411), III, 148. *See MASTER AND SERVANT.*

35. **Defendant was indicted, under a statute, for obstructing a railroad train, and endangering the safety of the passengers. The evidence showed that he was a passenger on the train; that he pulled a signal rope attached to a bell upon the engine, thereby causing the train to be stopped, and the safety of the passengers to be endangered. Held**, that the indictment was not maintained. 1873. *Commonwealth v. Killian* (109 Mass. 845), XII, 714.

36. **Regulations — restriction as to trains.** A regulation by a railway company, restricting the holder of a certain class of tickets to special trains, nothing of the kind appearing on the tickets, will not justify the expulsion of the holder of such a ticket from the regular trains, he having taken passage thereon without knowledge of the regulation. 1870. *Maroney v. Old Colony Railway Co.* (106 Mass. 153), VIII, 805.

37. **A railroad was assessed for benefits on the laying out of a highway. Held**, error. 1869. *City of Bridgeport v. New York, etc., R. R. Co.* (86 Conn 355), IV, 63.

38. One crossing a railroad track has a right to assume that the usual signals of the approach of a train will be seasonably given. 1870. *Tabor v. Missouri Valley R. R. Co.* (46 Mo. 353), II, 517.

39. The right of way of a railroad is an incumbrance within the meaning of a covenant against incumbrances in a deed. 1869. *Beach v. Miller* (51 Ill. 206), II, 290.

40. Vehicle-worthy road. A railroad company is not bound absolutely to furnish a vehicle-worthy road. 1871. *McPadden v. The New York Central R. R. Co.* (44 N. Y. 478), IV, 705. See CARRIER.

See TAXATION ; TRUST.

RAPE — See CRIMINAL LAW.

RATIFICATION.

1. A contract tainted with fraud may be ratified without a new contract founded on a new consideration. 1871. *Negley v. Lindsay* (67 Penn. St. 217), V, 427.

2. Of forged instrument. The ratification of the signing of a bond, by an obligor whose signature was forged, does not render him liable thereon, there being no new consideration. 1871. *McHugh v. County of Schuylkill* (67 Penn. St. 391), V, 445, and note, 447.

3. Of forged deed — presumption. Plaintiff's husband caused her name to be forged to a deed conveying her lands to M., under whom defendant claimed. Held, that plaintiff's silence for eleven years, after being informed of the transaction, did not amount to a presumptive ratification, in the absence of proof that she was fully informed of the name of the grantee, of his residence or address, and had all the means necessary to disaffirm the deed. 1870. *Ladd v. Hilderbrand* (27 Wis. 135), IX, 445.

See FORGERY.

REAL ESTATE BROKER — See BROKER.

REAL PROPERTY.

1. Sale of — covenants. A grantee of lands, after eviction, brought action against the grantor on covenants in the deed. Held, that the grantor was not estopped from showing title in himself, unless he had due notice of the ejectment suit. 1869. *Somers v. Schmidt* (24 Wis. 417), I, 191.

2. Covenants in contract for sale. In a contract for the sale of land the vendee agreed to pay the purchase-money in installments and the vendor to deliver the deed upon payment of the last installment. Held, that the covenants were independent and that the purchaser could enforce payment of all the installments without first tendering the deed. 1869. *Bowen v. Bailey* (42 Miss. 405), II, 601. But see *contra*, by the same court, *Robinson v. Barbour* (42 Miss. 797), II, 671. See COVENANTS

3. **Parol evidence to prove quantity.** Parol evidence is not admissible to prove a warranty of the quantity of land conveyed by deed. 1869. *Cabot v. Christie* (42 Vt. 121), I, 813.

4. — Where a vendor of land, with intent to induce the sale, makes representation as to the quantity, *as of his own knowledge*, and the vendee is thereby induced to purchase, the vendor is liable for any damage which the vendee may sustain by reason of a deficiency in the quantity as represented, although such representations are believed to be true by the vendor when made. *Ib.*

5. **Statute of frauds.** An oral agreement between two parties to become jointly purchasers of certain lands and to hold the same in undivided moieties is within the statute of frauds. 1869. *Green v. Drummond* (81 Md. 71), I, 14.

6. — **oral contract limiting use.** An oral contract limiting the manner in which an owner shall build upon or occupy his property, is void under the statute of frauds. 1869. *Rice v. Roberts* (24 Wis. 461), I, 195.

7. — The sale and conveyance of land by the owner amounts to a revocation of an oral agreement between him and an adjoining owner, whereby the latter was to build on the line between the lands a party wall, and the former was to pay one-half the cost thereof, provided the adjoining owner has notice of the sale, and has not at the time commenced the erection of the wall. *Ib.*

8. **The owner of land overhung by the branches of a fruit tree,** standing wholly on the land of an adjoining owner, is not entitled to any of the fruit growing thereon. 1872. *Hoffman v. Armstrong* (48 N. Y. 201), VIII, 537.

9. **Crops planted after an action of ejectment is commenced,** belong to the one recovering possession. 1869. *McLean v. Bovee* (24 Wis. 295), I, 185.

10. — Not so, however, if the crops are harvested before judgment. 1870. *Page v. Fowler* (39 Cal. 412), II, 463.

11. **Where one person owns the lower story of a building, and another the upper story,** with right of way thereto, the latter cannot recover of the former for necessary repairs of the roof, made by him. 1871. *Ottumwa Lodge v. Lewis* (34 Iowa, 67), XI, 135.

12. **The owner of one part of a building has no action to recover damages at law for the willful neglect of the owner of the other part in permitting his part to become ruinous and fall into decay,** whereby the plaintiff's part is injured. 1872. *Pierce v. Dyer* (109 Mass. 374), XII, 716.

See CONVEYANCE; CONTRACT; COVENANT; VENDOR AND PURCHASER.

REBELLION — *See* LIMITATIONS OF ACTIONS; WAR.

RECEIPT.

Under a contract for the delivery of hides, plaintiff was to receive a *bonus* on each hide delivered. At each delivery defendant paid the value of the hides, and received a receipt from plaintiff expressed to be *in full*. The *bonus* was not paid. *Held*, that plaintiff could recover the *bonus*, notwithstanding the receipts. 1872. *Ryan v. Ward* (48 N. Y. 204), VIII, 539.

RECOGNIZANCE — *See* ARREST.

RECOUPMENT.

1. **Damages for fraud.** A and B traded horses, each fraudulently representing his horse to be sound. A sued B for his (B's) fraud. *Held*, that B could recoup damages for A's fraud. 1870. *Carey v. Guilloe* (105 Mass. 18), VII, 494.

2. **For failure to perform agreement.** In an action by the payee upon a promissory note, the consideration of which was an agreement signed by the plaintiff, to convey to the defendant, on or before January 1, 1866, \$2,500 of the capital stock of the King Gold Mining Company, at subscription price, *held*, that the defendant might defend against the action by showing that no transfer or tender of the said stock was made to him until after August, 1866, and might recoup his damages arising from the plaintiff's failure to perform his agreement. 1869. *Hill v. Southwick* (9 R. I. 299), XI, 250.

REFERENCE.

1. **Without consent.** Courts of equity have a general jurisdiction where there are mutual accounts, and also where the accounts are on one side, but a discovery is sought, and is material to the relief. But where the accounts are all on the one side, and mere set-offs on the other, and no discovery is sought or required, courts of equity have no jurisdiction. 1869. *McMartin v. Bingham* (27 Iowa, 234), I, 265.

2. — Fourteen items, under eight different dates, and two credits, the account being all on one side and no discovery sought, and the defenses being denial, payment and the statute of limitation, will not deprive the parties of a right to a jury trial. *Ib.*

REMOVAL OF CAUSE TO FEDERAL COURT.

1. **Act unconstitutional.** The act of congress of March 2, 1867, in so far as it gives a non-resident plaintiff the right to remove a cause from the State to the federal courts, is unconstitutional. 1870. *Whiton v. Chicago and Northwestern Railroad Co.* (25 Wis. 424), III, 101; *Contra, Railway Co. v. Whitton* (18 Wall. 270).

2. **Rights as affected by residence of parties.** In an action pending in a State court, in which some of the plaintiffs were non-residents of the State and the others residents, the non-residents moved to have the cause removed into the United States Circuit Court, under act of congress of March 2, 1867. *Held*, that the cause could not be removed. 1872. *Beery v. Irick* (22 Gratt. Va. 484), XII, 589, and *note*, 545.

3. — Creditors of an intestate's estate, some of whom resided in New York, and others in Georgia, filed a bill against the administratrix, in Georgia, for a marshaling of the assets of the estate. The administratrix, by cross-bill, alleged that the estate was insolvent, and obtained an injunction restraining creditors from suing until the assets were marshaled. The New York creditors thereupon petitioned to remove the suit to the United States court. *Held*, that under the act of 1867 this could not be done. 1871. *Bliss v. Ransom* (43 Ga. 181), IX, 164.

4. — The right of a defendant to a transfer of the cause is not defeated by the fact that the co-defendant is a resident of the same State with the plaintiff, provided a severance can be had, and the rights of the petitioner can be determined separately. 1869. *Stewart v. Mordecai* (40 Ga. 1), II, 555.

5. Of action by administrator. In an action brought in New Hampshire, by an administrator appointed in that State, but a citizen of Massachusetts, against a Massachusetts life insurance company, upon a policy by which defendants promised to pay a certain sum to plaintiff's intestate, a citizen of New Hampshire, his executors, etc., after his death, for the sole use of his wife, a resident of New Hampshire, *held*, that the cause could not be removed into the United States court under the act of 1789. 1870. *Geyer v. The Hancock Mutual Life Insurance Co.* (50 N. H. 224), IX, 185.

6. An administrator filed a bill to marshal assets against creditors, some of whom had commenced suits at law. An injunction was allowed, conditioned to allow the claims to be litigated to ascertain the amounts due, the priority of the claims, and the right to payment out of the funds. One of the creditors resided in another State, and made application to have his action at law removed to the United States court. *Held*, that the cause was not subject to removal, as it was merely collateral to the suit in equity. 1872. *Burts v. Loyd* (45 Ga. 104), XII, 574.

7. Where both parties are non-residents. The United States statutes relative to transferring causes from the State to the federal courts authorize the transfer where the plaintiff is a citizen of the State where the suit is commenced and the defendant is a citizen of another State; where both plaintiff and defendant are non-residents of the State in which the action is commenced, the case is not within the statute. 1870. *Wills v. The Home Ins. Co.* (28 Iowa, 545), IV, 180.

8. Removal by plaintiff—affidavit. Where a citizen of one State commences an action against a citizen of another State in the courts of the latter State, the plaintiff is, nevertheless, entitled, afterward, to have the cause removed to the United States courts, under act of congress of March 2, 1867. The affidavits in such a case need not set forth the facts on which the applicant for the transfer bases his belief that local prejudice exists; it is sufficient if they state that he has reason to, and does, believe that such local prejudice exists as will prevent his obtaining justice. 1871. *Meadow Valley Mining Co. v. Dodds* (7 Nev. 148), VIII, 709.

9. A petition, by defendant, to remove a cause into the United States court must show that the plaintiff was a citizen of the State at the time of the commencement of the action; an averment that he is a citizen is insufficient. 1871. *Holden v. Putnam Fire Insurance Co.* (46 N. Y. 1), VII, 287.

10. Affidavit—traverse of. An affidavit filed in conformity to the acts of congress, passed 27th July, 1866, and 2d March, 1867, relating to removal of causes from State to United States courts, cannot be traversed in the State court. 1869. *Stewart v. Mordecai* (40 Ga. 1), II, 555.

11. When right to remove ceases. The right to remove a cause from the State to the United States court, under the act of congress of March 2, 1867, is

306 REMOVAL OF CAUSE TO FEDERAL COURT.

terminated by a hearing or trial upon the merits in a court of competent jurisdiction, resulting in a final judgment or decree; and an appeal or second trial does not revive the right. 1870. *Home Life Ins. Co. v. Dunn* (20 Ohio St. 175), V, 642.

12. — An action had been prosecuted to judgment in a State court, the verdict had not been set aside, the exceptions taken at the trial had been overruled by the court of last resort, and the only question remaining for disposal was upon a motion for new trial on the ground of excessive damages in the verdict. *Held*, that it was too late to obtain a removal of the cause to the United States Circuit Court, under act of congress of 1867, chap. 196. 1870. *Bryant v. Rich* (106 Mass. 180), VIII, 311.

13. — Where there has been a trial in an action at law, or a final hearing in a court of equity, and an adjudication upon the merits, it is too late to remove the cause into the federal court under the act of congress of March 2, 1867, notwithstanding the fact that the judgment may have been reversed on appeal and the cause remanded for new trial or further proceedings. 1869. *Akerley v. Vilas* (24 Wis. 165), I, 166.

14. **Pending appeal.** A cause cannot be removed from a State to a federal court, pending an appeal from a decree upon the merits. 1872. *Beery v. Irick* (22 Gratt. 484), XII, 539.

15. A non-resident insurance company doing business in a State, and accepting service of original process through its agents, in conformity to the laws of the State, is not thereby deprived of the right to a removal to the federal courts of an action commenced against it in the courts of the State by a citizen. 1869. *Knorr v. Home Ins. Co.* (25 Wis. 143), III, 26.

16. — A Massachusetts statute required that foreign insurance companies, doing business in that State, should appoint a resident agent, upon whom all lawful processes against them might be served with like effect as if they were domestic companies. *Held*, that a foreign company, by accepting service of process, as provided by the statute, was not precluded from removing a cause from the State court into the United States courts, in a proper case. 1870. *Morton v. Mutual Life Ins. Co.* (105 Mass. 141), VII, 505, and *note*, 507.

17. — By an act of the legislature of Michigan, it was provided that no foreign insurance company should transact business within that State without first appointing an agent in that State, on whom process of the State courts could be served, and "that such courts shall have exclusive jurisdiction of all cases arising under this act." A New York insurance company was sued in the State court of Michigan and accepted service of process through their agent in that State. On an application to the State Supreme Court for a writ of *mandamus* compelling the circuit judge to issue an order transferring the cause to the United States court; *held*, (1) that the company, by operating under the Michigan statutes, and accepting service of process, had waived the right of transfer; and (2) that a writ of *mandamus* was not the proper remedy even if the company were entitled to the transfer. 1870. *The People ex rel. Glens Falls Ins. Co. v. The Judge of Jackson Ciruit* (21 Mich. 577), IV, 504.

18. — A statute required foreign insurance corporations, before doing business within the State, to agree not to remove into the federal courts any suits brought against them in the State courts. *Held*, that the statute was constitutional. 1872. *Mores v. The Illinois Insurance Company* (30 Wis. 496), XI, 580. Reversed by the U. S. Sup. Court, Oct. Term, 1874.

19. *Of action against national bank.* Action brought by a citizen of New York, in a State court of New York, against a bank located in Boston. *Held*, (1) that the defendant was a citizen of Massachusetts within the meaning of the act relating to the removal of causes into the federal courts; (2) that the cause could not be removed by the bank into the federal court, under the act of March 2, 1867, as being a corporation, it could not make the affidavit required by the act. 1873. *Cook v. State National Bank* (52 N. Y. 96), XI, 667.

20. *Appeal from order of removal.* An order of a State court, transferring a cause to the federal courts under the act of congress of March 2, 1867, is an appealable order, and the State courts have jurisdiction to hear and determine the appeal. 1869. *Akerley v. Vilas* (24 Wis. 165), I, 166.

21. — The application of a party to remove a cause to the Circuit Court of the United States is analogous to a plea to the jurisdiction of the State court, and, when granted, the party against whom it is taken has the right to appeal. The case would be different if the application to remove is refused. In the latter case no irreparable injury would follow, and the appeal would not be allowed. 1871. *State v. The Judge of the Thirteenth Judicial District* (23 La. An. 29), VIII, 588.

22. — A mandamus will therefore issue, on application from the Supreme Court directing a judge of the District Court to grant an appeal from an order transferring a cause to the Circuit Court of the United States, if the case is, in other respects, appealable. *Id.*

23. *Removal on affidavits of prejudice.* Where it appeared from the affidavit of a person of color, charged with a capital offense, that he could not have full and equal benefits of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and that his rights cannot be enforced in the State courts: *Held*, that under the act of congress of 9th April, 1866, the State courts will proceed no further in the prosecution until certified of the action of the Circuit Court of the United States under the act of congress, March 8, 1868. 1871. *State v. Dunlap* (65 N. C. 491), VI, 746.

24. — It is erroneous in such a case to order the removal of the indictments to the Circuit Court of the United States; but to suspend proceedings in the cause till certified to the court under the aforesaid act of congress. *Id.*

REPAIRS — See LANDLORD AND TENANT.

REPLEVIN.

1. *Bond — void for want of jurisdiction — estoppel.* Defendants executed a bond for the purpose of procuring a writ of replevin, which bond a justice of the peace approved and thereupon issued a writ of replevin for certain property in plaintiff's possession, and which he claimed to own. The property

was taken under the writ. The value of the property exceeded the amount for which the justice of the peace had jurisdiction, and on the hearing of the cause the justice dismissed the proceedings on that ground, and directed a return of the property to the plaintiff. The defendants refusing to return the property, this action was brought upon the bond. *Held*, that the justice not having jurisdiction of the subject-matter, the bond was void and no action could be maintained thereon, and that the defendants were not estopped by the recitals in the bond. 1872. *Caffrey v. Dudgeon* (88 Ind. 512), X, 126.

2. **Damages in action of.** In replevin of property having a usable value (as a horse) the value of its use, during the time of detention, is a proper item of damages. 1873. *Allen v. Fox* (51 N. Y. 562), X, 641.

3. **Against execution creditor.** An officer, under a general promise of indemnity, but without direction from the execution creditor to levy upon any specified property, seized chattels in execution under a void judgment. In replevin against the officer and the execution creditor, it appearing that the latter never had possession of the goods; *held*, that the action could not be maintained as to him. 1872. *Grace v. Mitchell* (81 Wis. 538), XI, 613.

4. **By vendor for fraud.** The vendor of goods who has been induced to part with them through such fraud on the part of the vendee as annuls the sale, may replevy them of the vendee's general assignee. 1872. *Farley v. Lincoln* (51 N. H. 577), XII, 182.

RESIDENCE.

I. OF ELECTORS—*See* ELECTION.

II. OF PAUPER—*See* SETTLEMENT.

RESPONDEAT SUPERIOR—*See* CONTRACTORS.

RESTRAINT OF TRADE—*See* CONTRACTS.

RETURN.

The sheriff's return on a summons was that he had served it by leaving a copy thereof at the usual place of residence of the defendant. On a motion to set aside the return, *held*, that evidence was admissible to show that the place where the summons was left was not the defendant's residence. 1871. *Bond v. Wilson* (8 Kans. 228), XII, 466.

REVENUE STAMPS—*See* STAMPS.

REWARD.

1. **Action to recover—parties.** The selectmen of a town, under the authority of a general statute, offered a reward for the apprehension and conviction of a person guilty of the commission of a high crime. The plaintiff, claiming to have performed that service, brought action to recover the reward. *Held*, on demurrer, that the action was well brought. *Held*, also, that if two persons jointly performed the service they must be joined as plaintiffs. 1868. *Janerin v. Town of Exeter* (48 N. H. 83), II, 185.

2. **Sheriff may claim.** Plaintiff, a sheriff, captured a criminal without process and in reliance upon a general reward offered. *Held*, that the fact that he was a sheriff did not prevent his recovery of the reward. 1870. *Davis v. Munson* (43 Vt. 676), V, 815.

3. **Satisfaction of — knowledge of the reward.** The plaintiff recovered property stolen from the defendant and returned it to him. Defendant handed him some money, saying "here is something for what you have done." Plaintiff did not at the time look at the money, but afterward found it to be \$2. Defendant had on that morning offered a reward of \$50 for a recovery of the property, of which fact plaintiff was at the time ignorant, but for which reward he brought this action. *Held*, that he could not recover. 1870. *Marvin v. Treat* (37 Conn. 96), IX, 807.

4. In order to entitle a party to recover a sum of money, offered as a reward for the recovery or information leading to the recovery of property lost, he must establish between himself and the person offering the reward, not only the offer and his acceptance of it, but his performance of the service for which the reward was offered. Finding the property and advertising it, by one who did not know of the offer, and could not have acted in reference to it, does not entitle him to recover. 1873. *Howland v. Lounds* (51 N. Y. 604), X, 654.

RIPARIAN OWNER — *See* WATER AND WATER-COURSES.

RIVER — *See* WATER AND WATER-COURSES.

ROADS — *See* HIGHWAYS.

ROBBERY — *See* CRIMINAL LAW.

SABBATH — *See* SUNDAY.

SALE.

I. WHEN COMPLETE.

II. DELIVERY AND ACCEPTANCE.

III. FRAUDULENT SALE.

IV. CONDITIONAL SALE.

V. WARRANTY.

VI. MISCELLANEOUS PRINCIPLES.

VII. ACTION FOR THE PRICE.

VIII. OF LANDS — *See* CONVEYANCE.

IX. OF GOODS — *See* VENDOR AND PURCHASER.

I. WHEN COMPLETE.

1. To place articles sold at buyer's risk, delivery and acceptance must be such that nothing remains to be done by either party in respect to them; and where the sale is of a quantity of things by count, measure or weight, their number, quantity or weight must be determined before the sale is perfect, in the absence of an express intention to the contrary; and the same rule applies when delivery is to be made of the sold articles by installments. 1871. *Prescott v. Locks* (51 N. H. 94), XII, 55.

2. — Defendant agreed orally to buy of plaintiff what walnut spokes he should saw at his mill, not exceeding 100,000, at \$40 per thousand, to be delivered at the mill in lots of about 10,000 each, subject to defendant's selection, each lot to be paid for on delivery. Nothing was said about counting, but each party understood that he was to count them after selection. The defendant selected the first lot but did not count them. The plaintiff afterward counted those selected and charged them to defendant, but did not inform defendant of the number. The spokes having been burned, *held*, in an action for their value, that the sale was not perfected, and that the title to the property remained in plaintiff. *Id.*

3. When title passes — question for jury. T. sold to plaintiff part of a growing crop of corn, designating the part sold by cutting off the tops of one row. Plaintiff paid \$80 in cash, but, by the terms of the sale, T. was to cut and shock a part of the corn, and to gather the remainder, and the corn was then to be measured and paid for by the bushel. Subsequently, the said corn was levied on by virtue of an execution against T. In a proceeding to try the right of property, there was evidence tending to show that it was the intention of the parties that the sale should be complete and absolute at the time it was made. *Held*, that an instruction to the jury that, if the vendee was to cut and measure the corn, and it was then to be paid for by the bushel, no title passed to the vendee, and the property was liable to the executor, was error. Whether title passed or not was a question of intention, and was for the jury. 1871. *Graff v. Fitch* (58 Ill. 373), XI, 85, and *note*, 90.

4. When title passes without separation. The plaintiffs purchased of defendants a quantity of corn, parcel of a specified cargo, then stored in a warehouse, paid the price therefor, and received a receipted bill of sale. The defendants thereupon drew an order upon the superintendent of the warehouse, for delivery to plaintiffs of the quantity of corn from specified cargo, and the superintendent on receipt of the order gave defendants his orders for the delivery of said corn to plaintiffs, which order was delivered to plaintiffs. A few hours after, and before the presentation of said order, the warehouse was destroyed by fire, and with it the grain. *Held*, in an action to recover back the price paid, that the sale and delivery were consummated, and the loss, therefore, on the plaintiffs. 1870. *Russell v. Carrington* (43 N. Y. 118), I, 498.

5. — Upon a sale of a specified quantity of grain, its separation from a mass, undistinguishable in quality or value in which it is included, is not necessary to pass the title, when the intention to do so is otherwise clearly manifested. *Id.*

II. DELIVERY AND ACCEPTANCE.

6. What amounts to. The plaintiff purchased, in good faith, bales of wool stored in the seller's factory, and the seller agreed to keep the wool for a time where it was on storage for the plaintiff, who had no place to store it. The seller, by the plaintiff's direction, opened some of the bales, took out of them samples, and delivered them to the plaintiff together with a bill of parcels wherein was acknowledged the receipt of the contract price. Plaintiff desired the parcels to resell the wool by. *Held*, that there was evidence to go to the

jury of a delivery sufficient as to creditors. 1871. *Ingalls v. Herrick* (108 Mass. 351), XI, 360.

7. **Acceptance — presumption from retention — evidence.** In an action to recover the value of goods sold by a verbal contract, void by statute of frauds, the vendor proved delivery to the vendee, whereupon the vendee offered the contents of a telegram which he had attempted to send to the vendor, to show that he declined to accept the goods. The offer was rejected, on the ground that the vendor had not been shown to have received the telegram. *Held*, on appeal, that the acts of the vendee at the time of the receipt of the goods, and his *bona fide* attempts to communicate his rejection of them to the vendor, were material and competent to rebut any presumption of acceptance arising from their retention. 1872. *Caulkins v. Hellman* (47 N. Y. 449), VII, 461.

8. **Delivery to common carrier.** M. & B., of Annapolis, directed A. G. & Co., of Boston, to send a cargo of one hundred and fifty tons of ice, and authorized them to get the freight as low as possible. The invoice was completed, shipment was made in the usual mode, and advices thereof were sent by letter. The cargo having been badly damaged in the passage, in an action by the vendors to recover the value of the ice, *held*, that the delivery to the common carrier transferred the title to the vendees, and that the vendors could recover the contract price. 1870. *Magruder v. Gage* (83 Md. 844), III, 177.

9. — If the contract of purchase be silent as to the person or mode by which the goods are to be sent, a delivery by the vendor, to a common carrier in the usual and ordinary course of business, transfers the property to the vendee. *Ib.* See STATUTE OF FRAUDS.

10. — N. & T. ordered goods from plaintiff, to be sent to them "via canal." Plaintiff sent to them the goods "via canal," as ordered, and mailed to them a bill of sale. *Held*, that upon delivery to the carriers, the title to the goods passed absolutely to N. & T., subject only to the right of stoppage *in transitu*, and that plaintiff could not sue for a loss of the goods *en route*. 1871. *Krudler v. Ellison* (47 N. Y. 86), VII, 402.

11. If a vendee allow a vendor to remain in possession, or after a formal delivery, immediately restore the possession to him, and he afterward sell and deliver the goods to a *bona fide* purchaser for value, without notice of the prior sale, such purchaser is entitled to the goods against the first vendee and all claiming under him. 1869. *Davis v. Bigler* (63 Penn. St. 242), I, 393.

12. — This rule depends upon neither the statute 13 Eliz. ch. v, nor statute 27 Eliz. ch. iv, but upon the circumstance that the vendee, by suffering the vendor to remain in possession, enabled him to commit a fraud upon innocent third persons. *Ib.*

13. — The rule of law, that the retention of possession of personal property is conclusive evidence of a colorable sale, is a rule of policy required for the prevention of fraud, and is to be inflexibly maintained. *Ib.*

14. A husband, for a good consideration, conveyed cattle to his wife by an absolute bill of sale, which he delivered to her. The cattle were at the time upon the husband's farm where both he and the wife resided. No other

delivery of the cattle was made, and they remained and were used upon the farm as before. The cattle having afterward been attached on a writ against the husband, *held*, in replevin by the wife, that there was no sufficient delivery of the cattle from the husband to the wife. 1872. *McKee v. Garcelon* (60 Me. 165), XI, 200.

16. **Destruction of property before delivery.** Where a contract is made for the sale and delivery of specified articles of personal property, under circumstances where the title does not vest in the vendee, and the property is destroyed by an accident before delivery without the fault of the vendor, the latter is not liable upon the contract for damages sustained by the vendee. 1871. *Dexter v. Norton* (47 N. Y. 62), VII, 415.

III. FRAUDULENT SALE.

16. **Fraudulent — questions for jury — delivery.** Two sons, hotel keepers, disposed of their interest in the hotel furniture and fixtures to their father. The father had been living in the hotel previous to the transfer. After the transfer, the sons remained, and one of them acted as superintendent. The dissolution of the partnership of the sons, and the transfer to the father, were published in two leading newspapers. Subsequently the furniture was levied on under a judgment obtained against the sons. *Held*, that not only the question of good faith in making the transfer, but also the question whether there was such delivery, actual or constructive, as to be notice to all third persons, and whether the possession taken by the vendee was exclusive, or concurrent with the vendors, was to be submitted to the jury. 1870. *McKibbin v. Martin* (64 Penn. St. 352), III, 588.

17. **Fraud — replevin by vendor.** Where goods are purchased by means of such fraud on the part of the vendee as renders the sale void, and are transferred by a general assignment, the vendor may replevy the goods of the assignee. 1872. *Farley v. Lincoln* (51 N. H. 577), XII, 182.

IV. CONDITIONAL SALE.

18. **What is.** H. sold and delivered a house car to P., under a bill of sale providing that "said H. reserves the right from said car until fully paid, but said P. shall have the use of said car from date; should said P. fail to comply with this agreement, said H. shall have the right to take said car from said P. as his property." *Held*, that it was a conditional sale, and that the car might be taken under execution by P.'s judgment creditor. 1870. *Haak v. Linderman* (64 Penn. St. 499), III, 612.

19. **Estoppel of vendor — purchaser from vendee.** Plaintiff sold a chattel to G. on condition that it should remain plaintiff's until paid for, and gave him a receipted bill of sale therefor, omitting, at G.'s request, any statement of the condition. Defendant bought the chattel of G. without notice of the condition, after having been informed by plaintiff that he had sold it to G. and after having seen the bill of sale, but before G. had paid plaintiff for it. *Held*, that in the absence of fraud, the plaintiff was not estopped to claim the chattel from the defendant. 1871. *Zuchtman v. Roberts* (109 Mass. 58), XII, 668.

20. Accession — repairs to property. B. sold a wagon to H. on condition that it should remain the property of B. till paid for. Plaintiff repaired it for H. by putting in new wheels and axles. H. took it from plaintiff's possession without his knowledge or consent, and afterward agreed with plaintiff that the "running part" of said wagon should remain the property of plaintiff until paid for. H. never paid either B. or plaintiff, and neither had notice of the other's claim. B. took the wagon back from H. and sold it to defendant, who did not know of plaintiff's claim. *Held*, that defendant was liable in trover for the wheels and axles. 1873. *Clark v. Wells* (45 Vt. 4), XII, 187.

V. WARRANTY.

21. As to quality. The plaintiffs contracted to manufacture and deliver to the defendant "all the horn chains they manufacture." The chains manufactured and delivered were composed of round and oval links, the round links being hoof and the oval links being horn; and in an action to recover the contract price, *held*, (1) that the words "all the horn chains they manufacture" did not imply a warranty that the chains should be made wholly of horn, but that they should be the article known in the market as "horn chains;" (2) that the contract called for articles of a fair merchantable quality and of good workmanship, but not for articles of the first quality. 1869. *Sweat v. Shumway* (103 Mass. 365), III, 471.

22. The agent of defendants exhibited samples of tea to plaintiff and negotiated a verbal sale in value exceeding \$50. Subsequently a bill of sale and the tea were forwarded. There was no warranty in the bill of sale, but the tea was found to be unsound. *Held*, that the transaction was an executed sale with warranty, and that the plaintiff was entitled to recover without any offer to return the tea for breach of warranty. 1870. *Foot v. Bentley* (44 N. Y. 166), IV, 652.

23. At an auction sale, the auctioneer stated that the article offered was "blue vitriol, sound and in good order." It had the appearance of that article, and by no examination practicable at the time, could it be discovered that it was not. It was, in fact, what was known as mixed or "saltsburger vitriol," composed of a small proportion of "blue vitriol," the residue being green vitriol, an article of much smaller value. The defendants having bid off the property, refused to take and pay for it, on ascertaining its true character, and it was sold again on their account. In an action to recover the amount of the loss: *held*, that upon these facts, the jury might have properly inferred that there was upon the sale a warranty that the article sold was blue vitriol; that it was, at least, the duty of the court to submit the question of warranty to the jury, instead of directing a verdict for the plaintiff. *Held*, also, that there was a breach of the warranty; the article sold having only a small per cent of blue vitriol in it, and being not an inferior article of blue vitriol, but a different substance with a small admixture of blue vitriol. 1873. *Hawkins v. Pemberton* (51 N. Y. 198), X, 595.

24. Breach of — vendee not bound to return. Upon an executory contract of sale, with a warranty as to the quality of the article contracted for, the

purchaser is not bound to return, or offer to return, the article on discovering that it is of an inferior quality, but he may retain and use the property, and have his remedy upon the warranty. But the purchaser in an executory sale cannot rely upon a warranty as to open, plainly apparent defects, any more than he could upon a sale of goods *in presenti*. 1878. *Day v. Pool* (52 N. Y. 416), XI, 719.

25. **Warranty after sale.** A warranty of goods after the sale has been completed is void, unless supported by a new consideration. 1871. *Summers v. Vaughan* (35 Ind. 838), IX, 741.

VI. MISCELLANEOUS PRINCIPLES.

26. **Where made — sale by sample.** Defendant ordered, by sample, liquors of plaintiff's agent. The order was sent to plaintiff, and the goods were by him shipped to defendant. The defendant lived and the order was given in a State where the sale of liquors was unlawful. Plaintiff lived in and the goods were shipped from a State where such sale was lawful. *Held*, that the sale was made in the latter State, and that plaintiff could recover the price in an action in the courts of the former State. 1871. *Boothby v. Plaisted* (51 N. H. 436), XII, 140; *Hill v. Spear* (50 N. H. 258), IX, 205; *Tegeler v. Shipman* (83 Iowa, 194), XI, 118.

27. **After-acquired property — burden of proof.** Action of trover against executors for goods claimed by plaintiffs under a verbal contract whereby the testatrix, for a valuable consideration, agreed to sell and convey to them all the personal property she then had and all that she might thereafter acquire and die possessed of. *Held*, (1) that the contract was inoperative to pass title to the subsequently-acquired property, and that plaintiffs could recover for the conversion of such goods only as testatrix had when the contract was made; (2) that the burden of proof was on the plaintiffs to show which these were. 1872. *Wilson v. Wilson* (87 Md. 1), XI, 518.

28. **A sale at auction of distinct parcels of goods to the same purchaser, on separate bids, is an entire contract.** 1871. *Jenness v. Wendell* (51 N. H. 63), XII, 48.

29. **Plaintiff, a physician, sold his good will to defendant, another physician, and agreed to use his influence to induce his patients to employ the defendant.** *Held*, not to be against public policy. 1872. *Hoyt v. Holly* (39 Conn. 826), XII, 890.

30. **A sale of fish hereafter to be caught passes no title to the fish when caught.** 1871. *Lou v. Pew* (108 Mass. 847), XI, 357.

31. **A sale of stocks carries with it dividends already declared but to be subsequently paid.** 1872. *Burroughs v. North Carolina Railroad Co.* (87 N. C. 876), XII, 611.

32. **Of poisonous article.** V., the owner of a quantity of hay, knowing that white-lead paint had been spilt upon it, endeavored carefully to separate the damaged part from the rest, and supposed he had succeeded, and afterward sold the supposed undamaged part, without disclosing its condition, to F., whose cow ate thereof and died. *Held*, that V. was liable, and that the measure of

damages was the value of the cow, if F. used all reasonable means to restore her. 1869. *French v. Vining* (102 Mass. 182), III, 440.

33. Right of vendee to take goods — trespass. In an action for trespass, it appeared that plaintiff gave a chattel mortgage and afterward a bill of sale to defendant, of household furniture, that the furniture remained in possession of plaintiff, who subsequently removed to T., taking it with him, and, some time after that, went away from T., leaving his house locked and containing the furniture, and that defendant unlocked the house and took away the furniture. *Held*, that in the absence of other proof of some license or permission, express or implied, defendant was liable for forcible entry, although he believed, and had reasonable cause to believe, that plaintiff did not intend to return. 1870. *McLeod v. Jones* (105 Mass. 408), VII, 539.

34. Payment — bill or note of third person. When the vendor of goods accepts, at the time of sale, the note or bill of a third person the presumption is that he accepts it in payment and full satisfaction, unless the contrary be expressly proved. 1871. *Gibson v. Tobey* (46 N. Y. 687), VII, 397.

VII. ACTION FOR THE PRICE.

35. Breach of contract. Where an article, manufactured in accordance with a special contract, is accepted and retained by the vendee, he will be liable for the full contract price, there being no warranty, and the defects, if any, being obvious and patent; and in such a case a judgment obtained by the vendor for an unpaid balance of the contract price is a bar to an action by the vendee to recover for a breach of the contract. 1871. *Gibson v. Bingham* (43 Vt. 410), V, 289.

36. Evidence. In an action to recover the purchase-money of an article made under contract, the defense was that the article was not like the sample. *Held*, that evidence was admissible of the difference in the results produced by the sample and the imitation, as corroborative of their inherent difference. 1871. *Tilton v. Miller* (66 Penn. St. 888), V, 378.

37. Failure of vendor to pay special tax, no defense. Goods were sold and delivered by plaintiff to defendant. In an action to recover the contract price, *held*, that the fact that plaintiff was a wholesale dealer, and, during the time when the goods were sold, had not paid the special tax imposed by act of congress of 1864, chapter 178, section 79, did not invalidate the sale or prevent a recovery. 1871. *Larned v. Andrews* (106 Mass. 485), VIII, 846.

See CONTRACT; MISTAKE; STOPPAGE IN TRANSITU.

SALVAGE — *See SHIPS AND SHIPPING.*

SATISFACTION.

After the service of a writ, but before the session of the court, defendant paid the debt, which plaintiff received in full of the debt; but no costs were paid, though demanded by plaintiff. *Held*, that the plaintiff could not afterward proceed for nominal damages and costs. 1872. *Buell v. Flowers* (89 Conn. 463), XII, 414.

SAVINGS BANK — *See* BANK AND BANKING.

SCHOOLS.

A mandamus will lie compelling trustees to admit colored persons to the public schools, where separate schools are not provided for such persons. 1872. *State v. Duff* (7 Nev. 842), VIII, 718.

SEALED INSTRUMENT.

A partner has no authority to bind his firm by an instrument under seal, even where the seal is not essential. 1870. *Schmertz v. Shreve* (62 Penn. St 457), I, 439.

See BOND; CONTRACT.

SEALED VERDICT.

Consent of defendant to, no waiver of right to have jury polled. 1871. *Stewart v. People* (23 Mich. 63), IX, 78.

SEDUCTION.

1. In an action by a woman for breach of promise of marriage, the jury may consider the fact of the seduction of the plaintiff by the defendant by means of the promise in aggravation of damages. 1870. *Sauer v. Schulenberg* (33 Md. 288), III, 174; *Kelley v. Riley* (106 Mass. 839), VIII, 336.

2. Pregnancy or sexual disease. A ruling to the effect that an action for seduction cannot be maintained unless it is followed by pregnancy or sexual disease is erroneous. 1870. *Abrahams v. Kidney* (104 Mass. 322), VI, 220.

See MARRIAGE.SERVANT — *See* MASTER AND SERVANTSET-OFF — *See* AGENCY.

SETTLEMENT.

I. OF PAUPER.

II. OF CHILDREN — *See* PARENT AND CHILD.

Under the pauper laws a residence once established may be abandoned or lost without having acquired another; and the continuance of the residence of a pauper, who has left his place of abode, taking all he has, and with no intention as to returning, depends, in no degree, upon the fact of his return. 1870. *North Yarmouth v. West Gardiner* (58 Me. 207), IV, 279.

SEVERABLE CONTRACT — *See* CONTRACT.SEWERS — *See* MUNICIPAL CORPORATION.SHERIFF — *See* ESCAPE; EXECUTION; REWARD.

SHIPS AND SHIPPING.

1. **General average.** When a vessel puts into a port of distress and there tranships a portion of her cargo, the freight paid the substituted bottom is not an expense or loss to be contributed for in general average, where the transshipment is made for the purpose of earning full freight. 1871. *Hugg, adm'r, v. Baltimore and Cuba Smelting and Mining Company* (85 Md. 414), VI, 425.

2. — Expenses incurred for seamen's wages and subsistence are items of charge, proper to be included in the adjustment of general average. 1871. *Barker v. Baltimore & Ohio Railroad Co.* (22 Ohio St. 45), X, 726.

3. — A bark being in inevitable danger, without her fault, of collision with a steamer, changed her course so as to strike the steamer stem on, thereby probably saving herself from being sunk with her cargo. In consequence of the collision she was obliged to go for repairs into a port of a country where the duty of a steamer to keep out of the way of a sailing vessel was not recognized, and where she was compelled, at the suit of the owner of the steamer, by a decree of court, to bear half the damage to both vessels, and, therefore, to pay a certain sum to the steamer. In a suit in equity by the owner of the bark against the owners of her cargo for contribution, *held*, that neither the expenses of the repairs rendered necessary by the collision, nor the sum paid to the steamer, nor the costs of defending the suit, was a subject for general average. 1873. *Emery v. Huntington* (109 Mass. 481), XII, 725.

4. **Jettison — carrier's right to freight.** A common carrier of goods, by water, received a cargo of barley under a bill of lading, specifying that the property was to be delivered in good order at the place of destination without delay, that damage or deficiency in quantity was to be deducted from the charges, and freight was payable on delivery. A violent storm arose on the passage, and a jettison was necessitated. *Held*, that the carrier was entitled to freight upon the amount actually delivered without deduction for loss. 1870. *Price v. Hartshorn* (44 N. Y. 94), IV, 645.

5. **When ship owner not bound by acts of master — repairs.** In an action by the owner of a cargo against the owners of a vessel to recover for the contributory share for certain jettisoned cargo and expenses chargeable to the vessel and freight for certain bottomry bonds, in a general average contribution it appeared that the vessel and freight being insufficient to meet this contribution the cargo was taken for the payment of the deficiency, and the owner of the cargo claimed indemnity of the owner of the vessel. *Held*, that the owners of the vessel were not bound by the acts of the master, it being conceded that no prudent owner, if present, would have made or authorized such expensive repairs as were made by the master without any special authority. 1871. *Stirling v. Nevassu Phosphate Company* (85 Md. 126), VI, 372.

6. — A vessel of which defendant, a resident of New York city, was the nominal owner, was libeled in Buffalo, while in charge of J. S., the master and real owner, for a penalty incurred by carrying passengers without license. J. S., without defendant's knowledge, procured plaintiff to become bail for her release; and, on appeal from the decree enforcing the penalty, plaintiff became bail on the appeal bond also. The decree was affirmed and paid by plaintiff,

who brought action against defendant to recover the money so paid, claiming as surety in the appeal bond. *Held*, that as the vessel was libeled in a home port, and within communicating distance with defendant, J. S. had no right to bind him; also, that plaintiff must be deemed to have made the payment as defendant in the decree and not as surety on the appeal bond. 1871. *Gager v. Babcock* (48 N. Y. 154), VIII, 532.

7. **Collision.** A steamer employed in towing boats was navigating the bay of New York, with lights forward and aft and a red light on the pilot house, which were the usual lights for such vessels, but which did not conform to the requirements of an act of congress prescribing lights for vessels of that character. *Held*, that the omission to carry the lights prescribed by law did not of itself preclude a recovery for damages negligently and recklessly produced by another vessel running upon her or her tow. 1873. *Hoffman v. The Union Ferry Company* (47 N. Y. 176), VII, 435.

8. **Barratrous sale.** The holders of a bill of sale of a vessel, absolute on its face, but intended as a mortgage, may maintain an action for its conversion against a person claiming under a barratrous sale by the master, notwithstanding the fact that, on learning of the barratrous sale, they abandoned her to the underwriters and received payment as on a total loss. 1869. *Clark v. Wilson* (103 Mass. 219), IV, 532.

See CARRIER: CONSTITUTIONAL LAW; INSURANCE; JURISDICTION.

SIDEWALK — *See* HIGHWAY.

SLANDER AND LIBEL.

1. **Of professional character.** Written or printed words, charging another with being a drunkard and with making extortionate charges for his services, are libelous *per se*. 1871. *Sanderson v. Caldwell* (45 N. Y. 898), VI, 105.

2. — In an action by a lawyer for libel, where the publication is libelous *per se*, the plaintiff may, by extrinsic evidence, connect the libelous words with his professional character and recover the natural and proximate damages resulting therefrom to him, in his profession. *Id.*

3. — In slander, where the words used have such a relation to the profession or occupation of the plaintiff that they directly tend to injure him in respect to it, or to impair confidence in his character or ability, when from the nature of his business great confidence must necessarily be reposed, they are actionable, although not applied by the speaker to the profession or occupation of the plaintiff. When, however, they convey only a general imputation upon his character, equally injurious to any one of whom they might be spoken, they are not actionable, unless such application be made. *Id.*

4. **Charging offense not infamous.** In an action of slander, the words charged to have been spoken by the defendant were, that the plaintiff "had stolen corn out of G.'s field." *Held*, that if the conversation, in the course of which the alleged words were spoken, showed that the defendant referred to "standing corn," the plaintiff could not recover, the larceny of standing corn being

only an indictable offense, made so by statute, but not of an infamous character, or subject to an infamous or disgraceful punishment. 1871. *Stitzell v. Reynolds* (67 Penn. St. 54) V, 396, and note, 399.

5. Words spoken of a woman, charging that she had intercourse with a beast, or had committed sodomy, are actionable *per se*. 1870. *Haynes v. Ritchey* (30 Iowa, 76), VI, 642.

6. In an action of slander, for calling plaintiff a "deserter," without alleging special damage, *held*, that as the offense alleged was only cognizable by a court-martial, the action could not be maintained. 1869. *Hollingsworth v. Shaw* (19 Ohio St. 430), II, 411.

7. Pleading—act charged as done in another State. In an action of slander, if the alleged slanderous words charge an act to have been done in another State or country, which is not a crime by the common law, in order to make them actionable, the pleading should show and the evidence establish its criminality by the laws of such State or country. 1870. *Bundy v. Hart* (46 Mo. 460), II, 525.

8. — In an action for slanderous words spoken in Pennsylvania, and charging the commission of adultery in Georgia, *held*, that the words, charging an offense of moral turpitude, punishable by the law of the State where they were uttered, were actionable *per se*. 1871. *Klumph v. Dunn* (66 Penn. St. 141), V, 355, and note, 360.

9. Malice is essential to render slanderous words actionable; but when words actionable in themselves are spoken in a criminal sense, and are false, malice is implied from the speaking. 1870. *Mousler v. Harding* (33 Ind. 176), V, 195.

10. Testimony of witness. It is a question for the jury to determine whether answers given by a person in the course of his testimony as a witness, and claimed to be slanderous, were so given under the belief that they were pertinent and relevant to the question at issue, or from malice. 1870. *White v. Carroll* (43 N. Y. 161), I, 508.

11. Colloquium. In an action of slander the declaration was that defendant charged plaintiff with keeping "a bad house," *innuendo* a bawdy-house. *Held*, that the declaration was bad for want of sufficient colloquium to justify the *innuendo*. 1872. *Peterson v. Sentman* (37 Md. 140), XI, 534.

12. Privileged communication. A newspaper, after alluding to certain outrages perpetrated by "ruffians," proceeded to state that plaintiff, "a young man on the Washington train, who is engaged in selling papers, and who takes every occasion to insult Republican passengers, appears to have been in collusion with the ruffians. On approaching the city he went around to take a vote of the passengers, the object being evidently to spot the Republicans, that the assailants might know who were their friends and who their opponents." In an action against the publishers, *held*, that the publication was libelous *per se*, and that it was not such a privileged publication or criticism as protected them from liability. 1870. *Snyder v. Fulton* (34 Md. 128), VI, 814.

13. — a communication is privileged when made in good faith in answer to one having an interest in the information sought; or if volunteered, when the person to whom the communication is made has an interest in it, and the person by whom it is made stands in such a relation to him as to make it a proper or reasonable duty to give the information. 1871. *Sunderlin v. Bradstreet* (46 N. Y. 188), VII, 323.

14. — reports of the financial condition of merchants, although disseminated in good faith from an intelligence office by means of semi-annual publications, in large numbers, with weekly corrections, are not privileged communications within the rule; and the publishers are liable for any false report, although honestly made, notwithstanding the libelous matter is in cipher, understood only by the subscribers. Such a communication, to be privileged, must be confined to those having an interest in the information. *Ib.*

15. — Defendants, having been defrauded of a large amount of goods by persons with whom they had reason to and did believe plaintiff to be associated, prepared and signed a paper, stating that they, with others, had been "robbed and swindled" by plaintiff and others, and agreeing to bear proportionally the expenses of a criminal prosecution of plaintiff and such others. The paper was exhibited to an agent of one of the defrauded persons for signature. *Held* a privileged communication. 1871. *Klink v. Colby* (46 N. Y. 427), VII, 360.

16. Justification — what degree of evidence will sustain. Action for slander in charging the plaintiff with the crime of adultery. Plea, that the words were true. *Held*, that a preponderance of evidence would support the plea, and that the defendant was not bound to prove the plea beyond a reasonable doubt as on indictment for crime. 1873. *Ellis v. Russell* (60 Me. 209), XI, 304.

17. When truth of charge may be proved though not pleaded. In an action of slander the defendant pleaded the general issue only, without notice of special matter. At the trial he offered evidence tending to prove the truth of the charge, for the purpose only of rebutting malice and mitigating damages. *Held*, that such evidence was admissible. 1869. *Huson v. Dale* (19 Mich. 17), II, 86.

18. — If the defendant wishes to rely on the truth of the charges of justification, he must plead it; but he may introduce evidence tending to prove its truth, to rebut malice, under the general issue and without notice. *Ib.*

19. When not evidence of malice. In an action for libel where, under an answer proper to that end, the defendant has shown that the communication was privileged, his further answer of justification by the truth of the charge, though without proof to sustain it, may not be taken into consideration as evidence of malice, and in aggravation of damages. 1871. *Klink v. Colby* (46 N. Y. 427), VII, 360.

20. Mitigation. In an action for slander, the fact that the words were spoken in the heat of passion, or under excitement, may be shown in mitigation of damages, but not in bar of the action. 1870. *Mousler v. Harding* (33 Ind. 176), V, 195.

21. Meaning of words spoken — malice — justification — repetition of slander. In an action of slander, *held*, (1) that the slanderous sense of the words spoken is not to be determined by the understanding of the hearers, where the language is plain and direct; (2) that the question of malice is never to be determined by the opinion or understanding of the hearers; (3) that the defendant may prove that he was acting from a sense of moral and legal duty; (4) that express or actual malice need not be shown except in cases of privileged communications; (5) that, where the defendant pleads justification, he may prove the truth of the matter spoken, which will constitute a sufficient defense; (6) that the commencement of a malicious suit by a third person against plaintiff may be proved as the result of the slanderous words; (7) that, where a party introduces a witness, he does not thereby indorse his credibility, although he cannot impeach such witness: and, (8) that the repetition of slanderous words must be done from good motives and without malice, and the repeater must give, not only the precise words of the author, but the name of a responsible person against whom the injured party may bring his action. 1870. *Jarnigan v. Fleming* (48 Miss. 710), V, 514.

22. Charge to jury. The plaintiff sued the editor and the publisher of a newspaper, for an alleged libelous article appearing in their columns. The article contained a statement, with comments, of judicial proceedings instigated by J. to obtain a divorce from his wife on the ground of her adultery with plaintiff; and at the trial the judge charged the jury that, "taking the whole article together, the petition for divorce, and the comments upon it, there can be no doubt that it is libelous and grossly so." *Held*, correct. 1870. *Pittcock v. O'Neill* (63 Penn. St. 258), III, 544.

23. Variance. In an action of slander, the words charged and the words proved must be substantially the same; that they both convey the same idea, will not be sufficient to sustain the action. 1870. *Bundy v. Hart* (46 Mo. 460), II, 525.

24. — In an action for slander it is not necessary to prove the precise words as averred in the petition, but it is sufficient to prove them substantially as therein set forth. 1870. *Desmond v. Brown* (29 Iowa, 58), IV, 194.

25. Damages — degree of malice. In an action of slander, the jury, in assessing the damages, may consider the degree of malice with which the alleged slanderous words were spoken, as shown by the subsequent acts and declarations of the defendant; but they cannot give damages for such acts and declarations, however infamous or criminal they may be. 1871. *Stitsell v. Reynolds* (67 Penn. St. 54), V, 396.

26. — evidence of plaintiff's condition. In an action for slander the position in life and the family of the plaintiff is admissible in evidence on the question of damages. 1871. *Klumph v. Dunn* (66 Penn. St. 141), V, 355. and *note*, 360.

27. — In an action for the publication of an article libelous *per se*, damages to plaintiff or malice in defendant need not be affirmative y shown. 1871. *Sanderson v. Childs* (45 N. Y. 394), VI, 105.

28. Punitive damages. In an action of libel the rule is that the plaintiff, if the verdict be in his favor, is entitled to recover compensation for such injury as the jury may find he sustained as the direct consequence of the publication, and, if the jury should find from the evidence that the publication proceeded from express malice or ill-will to the plaintiff, then they are to award him such exemplary or punitive damages as they may think the facts of the case justify. 1870. *Snyder v. Fulton* (84 Md. 128), VI, 814.

29. A contract to indemnify the publisher of a libel is void. 1870. *Atkins v. Johnson* (43 Vt. 78), V, 260, and *note*, 264.

SLANDER OF TITLE.

H was prevented from making an advantageous sale of lands belonging to him and containing an iron ore mine, by the misrepresentations of P. to the proposed buyer, to the effect that an experienced iron manufacturer was of opinion that the iron mine was but a "pocket," or nest that would suddenly run out. *Held*, that H. could recover damages from P. in a suit in the nature of an action of slander for defamation of title. 1870. *Paull v. Halferty* (68 Penn. St. 46), III, 518.

SLAVES.

1. Promissory note for purchase price of slaves sold after the date of the emancipation proclamation, *held*, valid. 1870. *McEwen v. Mudd* (44 Ala. 48), IV, 106.

2. — A note given for slaves in Kentucky while slavery was there legal, may be recovered on in Illinois, and this notwithstanding the subsequent abolition of slavery. 1869. *Roundtree v. Baker* (53 Ill. 241), IV, 597.

3. A warranty on the sale of slaves in 1856 of the title of said slaves for life was not broken by the emancipation of the slaves by the United States. 1870. *Fitzpatrick v. Hearne* (44 Ala. 171), IV, 128.

4. Slave contracts. An ordinance of a State convention declaring all contracts for the sale of lands made between certain dates prior thereto, and the consideration of which was slaves, null and void at the election of either party, impairs the obligation of a contract and is void. 1870. *Reach v. Gunter* (44 Ala. 209), IV, 133.

See CONTRACTS; MARRIAGE; WAR.

SOCIETY — *See* CORPORATION.

SPECIFIC PERFORMANCE.

A parent made a parol promise to convey land to his child, whereupon the child took possession and made extensive and valuable improvements. *Held*, after the death of the parent, specific performance could be enforced. 1870. *Kurtz v. Hübner* (55 Ill. 514), VIII, 665.

See EQUITY.

STAMPS.

1. On official bonds of State officers. Congress has no power to impose a stamp tax upon official bonds given to a State by its officers. 1860. *State v. Garton* (32 Ind. 1), II, 815.

2. — The provisions of the act of congress of June 30, 1864, requiring stamps upon written instruments, apply to bonds given by State and municipal officers on entering upon their official duties. 1870. *The City of Muscatine v. Sterneman et al.* (30 Iowa, 526), VI, 685.

3. Omission of stamp. An omission, without fraudulent intent, to stamp a promissory note does not render it void. 1870. *Bumpass v. Taggart* (26 Ark. 398), VII, 623; *Green v. Holway* (101 Mass. 248), III, 339; *Dailey v. Coker* (83 Tex. 815), VII, 279; *Burson v. Huntington* (21 Mich. 415), IV, 497; *Duffy v. Hobson* (40 Cal. 240), VI, 617; *Davis v. Richardson* (45 Miss. 499), VII, 733; *Simmons v. Holloway* (21 Mich. 162), IV, 465.

4. Act does not apply to State courts. The internal revenue act of June 30, 1864, prohibiting unstamped instruments from being received in evidence, does not apply to State courts. *Ib.* Contra: *City of Muscatine v. Sterneman* (30 Iowa, 526), VI, 685.

5. An unstamped deed of real estate is valid, in the absence of proof of fraudulent intent in omitting the stamps. 1872. *Moore v. Moore* (47 N. Y. 467), VII, 466, and *note*, 468.

6. — It is not within the constitutional power of congress to declare that a contract or conveyance, between citizens of a State, affecting real estate, is void, for the reason that a revenue stamp has been omitted. *Ib.*

7. Chattel mortgage stamp. The omission, without fraudulent intent, to stamp a chattel mortgage as required by the United States internal revenue act, does not affect its validity. 1870. *Moore v. Quirk* (105 Mass. 49), VII, 499.

8. Recording unstamped instruments. The clause in the United States internal revenue act, providing that instruments not stamped as therein required shall not be recorded, does not affect the recording of such instruments under State laws. *Ib.*

9. Omission of stamp — stamp act not retrospective. When a promissory note for \$120, made June 20, 1865, and bearing only a five-cent internal revenue stamp, was offered in evidence, *held*, (1) that such note is not invalid under the internal revenue act, approved March 3, 1865, unless the proper stamp was omitted to evade the provisions of such act; (2) that such note is admissible in evidence, and that the provisions of the act of congress, approved July 13, 1866, were intended to be prospective and not retrospective, and apply only to instruments issued after such act took effect. 1870. *Rheinstrom v. Cone* (26 Wis. 163), VII, 48, and *note*, 51.

10. The failure to properly cancel United States revenue stamps affixed to an instrument does not render it invalid or incapable of being introduced in evidence. 1870. *D'Armond v. Dubois* (23 La. An. 181), II, 718.

11. Upon an indictment for uttering a forged promissory note, it is no defense that the note was not stamped. 1871. *State v. Mott* (16 Minn. 473) X, 152, and *note*, 154; 1873. *Miller v. People* (53 N. Y. 804), XI, 706.

12. **Stamping at trial — fraudulent intent.** A promissory note not stamped in accordance with the United States revenue laws may, in the absence of fraud, be stamped at the trial of an action on the note, and then given in evidence. Mere omission to stamp a note is not evidence of fraudulent intent. 1870. *Morris v. McMorris* (44 Miss. 441), VII, 695.

13. **A deputy collector has no power to remit penalties and stamp instruments** that have been left unstamped by inadvertence or mistake, except where he acts by special authority from the collector. 1870. *City of Muscatine v. Sterneman* (30 Iowa, 526), VI, 685.

14. **Stamps not taxable.** United States internal revenue stamps are exempt from all State and local taxation. 1869. *Palfrey v. City of Boston* (101 Mass. 329), III, 364.

15. **Where a certificate of deposit is inadmissible for want of a stamp,** parol evidence is admissible to prove the facts it recites. 1870. *Leach v. Hale* (31 Iowa, 69), VII, 112.

16. **Stamp act not in operation in Confederate States during war.** The United States internal revenue laws were not in operation in the Confederate States during the war, and it was therefore unnecessary to stamp promissory notes to give them validity. 1870. *McElvain v. Mudd* (44 Ala. 48), IV, 106.

STATE BONDS.

The bonds of the State were expressed on their face to be payable in gold and silver coin. The legislature passed a resolution to pay them in legal tender notes. *Held*, that the court had no power to compel the State officers to make payment in coin. 1872. *State v. Hays* (50 Mo. 34), XI, 402.

STATE STAMPS — See CONSTITUTIONAL LAW.

STATE TAX.

1. On the tonnage transported by railroads, *held*, not in violation of the federal constitution. 1869. *Commonwealth v. Erie Ry. Co.* (62 Penn. St. 236), I, 399; reversed, 15 Wall. 282.

2. **Requiring non-residents to obtain a license before selling goods by card or sample,** *held*, constitutional. 1869. *Ward v. State* (31 Md. 279), I, 50; reversed, 12 Wall. 418.

STATUTE OF FRAUDS.

I. CONTRACTS FOR SALE OF GOODS.

II. CONTRACTS RELATING TO LAND.

III. AGREEMENTS TO ANSWER FOR THE DEBT OR DEFAULT OF ANOTHER.

IV. CONTRACTS NOT TO BE PERFORMED WITHIN A YEAR.

V. TRUSTS.

I. CONTRACTS FOR SALE OF GOODS.

1. **Delivery and acceptance.** In an action to recover the value of wine sold by verbal contract, void under the statute of frauds, the judge charged that if the wine, or any portion of it, was delivered in pursuance of the contract, in

good order and according to sample, that circumstance was sufficient to take the contract out of the statute of frauds, and entitle the vendor to a verdict for the contract price. *Held*, error, on the ground that under such a contract there must be not only a delivery of the goods by the vendor, but a receipt and acceptance of them by the vendee, to pass title or render the vendee liable for the price, and this acceptance must be voluntary and unconditional. The receipt of the goods, without an acceptance, is not sufficient to take the contract out of the statute of frauds. 1872. *Caulkins v. Hellman* (47 N. Y. 449), VII, 461, and *note*, 466.

2. **Delivery to carrier.** Where a contract of sale is verbal, the delivery of the goods, after acceptance, to a carrier designated by the buyer, is sufficient to satisfy the statute of frauds. 1871. *Cross v. O'Donnell* (44 N. Y. 661), IV, 721.

3. — Goods sold were delivered to a carrier by direction of the buyer; but he never had any actual possession or exercised any control over them and never received any bill of lading. *Held*, that there was not a sufficient acceptance and receipt to take the sale out of the statute of frauds. 1870. *Johnson v. Cuttle* (105 Mass. 447), VII, 545.

4. **Agreement to manufacture goods.** The statute of frauds applies to an oral contract for the sale of goods in existence at the time of making the contract, but not to an agreement to manufacture and deliver goods. 1871. *Parsons v. Loucks* (48 N. Y. 17), VIII, 517.

5. — Defendant made an oral agreement to manufacture and deliver a quantity of paper to plaintiff. In an action for breach of the contract, *held*, that the agreement was valid, notwithstanding the statute of frauds. *Id.*

6. **An oral contract for sale and delivery of an article to be subsequently manufactured** by the vendor is within the statute of frauds, unless the agreement calls for the peculiar skill, labor or care of the manufacturer, in which case it is for work and labor and not within the statute. 1871. *Prescott v. Locke* (51 N. H. 94), XII, 55.

7. **Verbal agreement—deposit—"earnest."** Plaintiff and defendant made an oral contract for the sale of property by the plaintiff to the defendant, and each deposited a sum of money with a third party, to be paid by him to either, in case the other should fail to fulfill his part of the contract. *Held*, that the deposit was not an "earnest" within the statute of frauds. 1871. *Howe v. Hayward* (108 Mass. 54), XI, 306.

8. **Sale of crop to be raised.** Plaintiff made a parol contract with defendant, whereby the latter was to raise three acres of potatoes and deliver them to plaintiff at a stipulated price per bushel. In an action for non-delivery, *held*, that it was a question for the jury to determine, whether, under the contract, the defendant was bound to raise the potatoes himself, in which case it would be a contract for work, labor and materials, and not within the statute of frauds; or whether he might procure them by purchase or otherwise, which would render it a contract of sale, and therefore void. 1869. *Pitkin v. Noyes* (48 N. H. 294), II, 318.

9. **When contract entire — auction sale — separate bids.** At an auction sale of hotel furniture and stable stock connected with the hotel at the same time and upon the same terms and conditions, part of which were cash on delivery had by plaintiff, defendant made separate purchases at various prices and under different bids; a number of which were under \$33, but all amounting in the aggregate to a sum exceeding \$33. The stable stock was taken away by defendant at the time of sale and afterward paid for by him. The remainder of the articles, which were carpets, were left in the hotel by consent of plaintiff and defendant, and were subsequently destroyed with the hotel by fire. In an action to recover the amount of defendant's bids, it was *held*, that the contract of sale was an entirety and, therefore, within the statute of frauds, but that the delivery of the stable stock carried the transaction without the operation of the statute. 1871. *Jenness v. Wendell* (51 N. H. 63), XII, 48.

10. **Memorandum signed by one party — mutuality.** The plaintiff brought action for the non-performance of an agreement contained in the following memorandum, signed by the defendants: "New York, 18th May, 1861. We agree to deliver P. S. Justice one thousand Enfield pattern rifles, with bayonets, no other extras, in New York, at eighteen dollars each, cash upon such delivery; said rifles to be shipped from Liverpool not later than 1st July, and before if possible. W. BAILEY LANG & Co." *Held*, that this memorandum was a sufficient compliance with the requirements of the statute of frauds to bind the defendants; that there was a good and sufficient consideration for their obligation and that the plaintiff was therefore entitled to recover. 1870. *Justice v. Lang* (42 N. Y. 493), I, 576.

II. CONTRACTS RELATING TO LAND.

11. **Oral agreement to convey land.** The conveyance of land cannot be decreed in equity by reason merely of an oral agreement therefor, against a party denying the alleged agreement, and relying upon the statute of frauds, in the absence of evidence of change of situation or part performance, creating an estoppel against a plea of the statute. 1869. *Glass v. Hulbert* (102 Mass. 24), III, 418.

12. **A parol promise to give lands followed by occupation by the promisee, who made extensive improvements upon the land, held valid and enforceable in equity.** 1870. *Freeman v. Freeman* (43 N. Y. 34), III, 657.

13. **An oral contract between the owners of adjoining lots, limiting the use which one of them should make of his lot, or the manner in which he should build upon or occupy it, is within the statute of frauds, and therefore void.** 1869. *Rice v. Roberts* (24 Wis. 461), I, 195.

14. **Contract as to use of church.** The right to use a church edifice to worship in when unoccupied by the church to which it belongs is an interest in real estate, and a contract therefor, to be valid under the statute of frauds, must be in writing, signed by the party to be charged. 1870. *Brumfield v. Carson* (38 Ind. 94), V, 184.

15. **Sale of land — memorandum.** A. contracted with B. for the sale of a lot of land, the only written evidence of the contract being several receipts.

signed by A. and his agent, acknowledging the receipt of certain sums of money from B. "in part payment for a house and lot," without describing the premises, or furnishing any data for ascertaining their locality. *Held*, that said writings were insufficient to take the case out of the statute of frauds, and that part performance of the agreement was also insufficient in this State. 1869. *McGuire v. Stevens* (42 Miss. 724), II, 649.

16. — Bill for the specific performance of a contract, of which the following was the only written evidence: "Received of (plaintiff) \$100 as part payment on a piece of property on the corner of," giving streets, city, county and State, and signed by the defendant. *Held*, not a sufficient memorandum within the statute of frauds. 1873. *Holmes v. Evans* (48 Miss. 247), XII, 872.

17. Plaintiff verbally agreed to purchase land of defendant, and paid money with a stipulation that defendant might retain it as a forfeiture if plaintiff failed to complete the contract. The defendant was willing and offered to convey, but plaintiff refused to perform. *Held*, that the whole agreement was one entire contract; that it was void by the statute of frauds; and that the plaintiff could recover the money paid as money had and received. 1873. *Scott v. Bush* (36 Mich. 418), XII, 811.

18. Mutual wills. A and B mutually agreed by parol that each should make a will of her real and personal estate in favor of the other and the wills were so made, but B afterward made another will in favor of other parties and died. *Held*, that the agreement was a contract for the sale of lands within the statute of frauds, and therefore void. 1869. *Gould v. Mansfield* (108 Mass. 408), IV, 573.

19. Agreement to release dower. The wife of B. agreed with defendants to release her right of dower in lands which B. wished to convey to their use by a trust deed; the consideration of the release being a verbal promise by defendants that they would pay a debt of B. to C. B. and wife executed the trust deed, but defendants refused to pay the C. debt. *Held*, that the verbal agreement of defendants was not within the statute of frauds. 1870. *Brown v. Brown* (47 Mo. 130), IV, 320.

20. A mutual transfer of possession of lands, under a parol contract, which continues exclusive and undisturbed for nineteen years, is a valid transfer of titles, and is not within the statute of frauds. 1870. *Moss v. Oulser* (64 Penn. St. 414), III, 601.

21. Auction sale — memorandum. An agreement was entered into between W. and H., to purchase property jointly at auction. In pursuance thereof, W. bid off the property, and in the auctioneer's memorandum the name of W. was written as purchaser. On the following day a partner of W. added the name of H. as purchaser in the memorandum, without the direction of H., who refused to fulfill his part of the agreement. A loss having occurred by a resale, in an action by W. against H., to recover his share of the loss, *held*, that the agreement was within the statute of frauds; that the memorandum did not take it out of the statute, and that H. was not liable. 1873. *Walker v. Herring* (31 Gratt. Va. 678), VIII, 616.

22. **Agreement to purchase jointly real estate.** An agreement, whereby G. and D. agree to become jointly purchasers of certain real estate, each party to furnish one-half the purchase-money, and to hold the same in undivided moieties, is within the fourth section of the statute of frauds, and if not evidenced by some memorandum in writing, signed by the party to be charged, will not be enforced. 1869. *Green v. Drummond* (31 Md. 71), I, 14.

23. — Where, in pursuance of such an agreement, a purchase was made in the name of D. alone, although G. advanced a portion of the purchase-money, a conventional trust that could be enforced was not created, the same being within the provisions of the seventh section. *Ib.*

24. — There being no deed or conveyance of the legal title to D., while the contract of purchase remained executory, no resulting trust within the meaning of the eighth section of the statute could arise in favor of G. *Ib.*

25. **Plaintiff, at defendants' request, bought lands at sheriff's sale in his own name for their benefit.** The defendants promised orally to pay the purchase-money, but failed to do so; whereupon, pursuant to the conditions of sale, the land was resold at a less price and plaintiff was compelled to pay the difference, to recover which this action was brought. *Held*, that the contract between plaintiff and defendants was one of agency and not within the statute of frauds, and was therefore provable by parol evidence. 1873. *Baker v. Wainwright* (36 Md. 386), XI, 495.

III. AGREEMENTS TO ANSWER FOR THE DEBT OF ANOTHER.

26. **Promise to pay the debt of another.** An oral promise by A. to pay a debt of B., provided C. will discontinue a suit pending against B. for its recovery, is void, under the statute of frauds. 1870. *Duffy v. Wunsch* (43 N. Y. 248), I, 514

27. — An oral promise by B. made to C., and upon consideration passing between him and C., to pay a debt due from C. to the plaintiff, is a valid promise, and the plaintiff can maintain an action thereon. 1870. *Barker v. Bradley* (43 N. Y. 816), I, 521.

28. — A debtor promised orally to pay part of his debt by paying the debt of his creditor to a third person, to which arrangement the latter subsequently assented. *Held*, that the promise was not within the statute of frauds. 1870. *Putnam v. Farnham* (27 Wis. 187), IX, 459.

29. — Plaintiff had a debt against S. who had a debt against D., and a lien therefor upon defendant's vessel. S. being pressed for money by plaintiff, told him that he should have his lien-claim on the vessel, to be enforced if D. should not pay the amount thereof to plaintiff. Defendant hearing of this, and not desiring that his vessel should be stopped, verbally promised plaintiff that he would pay S.'s claim if D. should not do so. Plaintiff did not discharge S., nor did S. release D. or his lien on the vessel, although he did not enforce it as he would have done, but for the expectation raised by defendant's promise that the claim would be paid to plaintiff. D. afterward collected of defendant, but did not pay plaintiff. *Held*, that the promise was within the statute of frauds. 1870. *Stewart v. Campbell* (58 Me. 439), IV, 296.

30. **Novation.** It was orally agreed among three parties — a creditor, a debtor and a promisor — that if the debtor would pay the amount of the claim, in money and notes, to the promisor, the promisor would pay the claim of the creditor in plated ware, and the creditor should release the debtor. In pursuance of this agreement, the promisor executed a written undertaking to the creditor to furnish the plate; the creditor, at the same time, executed a written agreement to give his claim against the debtor to the promisor, on the delivery of the plate, and about the same time the creditor released the debtor. The promisor delivered a portion of the plate; and in an action by the creditor against the promisor, for the value of the balance of the plate, *held*, that there had been a substitution of debtors, and the oral promise was not within the statute of frauds; also that the creditor was not bound to assign the claim to the promisor as a condition precedent to the delivery of the plate, or to the beginning of an action for the non-delivery. 1871. *The Meriden Britannia Co. v. Zinsgen* (48 N. Y. 247), VIII, 549.

31. The mortgagee of part of a vessel promised persons who had furnished her with supplies, for which they had no lien on her, to pay the debt if they would not attach the interest of the other part owners. *Held*, that the promise was within the statute of frauds. 1871. *Ames v. Foster* (108 Mass. 400), VIII, 848.

32. G., owner of a patent hay fork, and desirous of organising a company to deal therein, orally promised B. that if he would become one of the company and take shares and give his note therefor, that he, G., as soon as the company was organized, would find a man to take the shares and pay the notes, without charge of expense to B. *Held*, that the promise was not within the statute of frauds. 1871. *Green v. Brookins* (28 Mich. 48), IX, 74.

33. Defendant orally promised to indemnify plaintiff for indorsing the promissory note of another, and plaintiff, relying solely upon such promise, indorsed the note. *Held*, that the promise of indemnity was not void under the statute of frauds. 1872. *Vogel v. Melms* (31 Wis. 306), XI, 608.

34. — The plaintiff became surety on the note of an individual member of a firm, on the assurance of the firm that the money to be raised was for their use, and that they would pay it. The maker of the note became insolvent, and plaintiff paid the note, and brought suit against the remaining partner for the amount. *Held*, that the engagement of the firm was in effect a promise to indemnify against their own obligation, and was, therefore, not void under the statute of frauds. 1870. *Garner v. Hudgins* (46 Mo. 899), II, 520.

35. **Severable contracts.** The promise to pay for both past and future board of another at a certain rate is severable, and the plaintiff may recover for so much of it as is not within the statutes. 1868. *Haynes v. Nice* (100 Mass. 327), I, 109.

IV. CONTRACTS NOT TO BE PERFORMED WITHIN A YEAR.

36. **Entirety** — contract to be performed within a year. On the 1st of January plaintiff made a parol contract with defendant to sell him all the wood

upon a certain lot, at five dollars a cord, and to deliver as much thereof as he could that winter, and the balance the winter and year following, the defendant to pay on demand for amount delivered at the close of each winter's delivery. Plaintiff delivered a portion of the wood that winter, which was accepted and paid for; the remainder he delivered the winter and spring following, but defendant refused to accept or pay for it. *Held*, that the contract was entire; that the delivery and acceptance of the first part took the case out of the statute of frauds; and that it was not a contract which was not to be performed within one year from the making of it, within the meaning of the statute. 1868. *Gault v. Brown* (48 N. H. 183), II, 210.

37. Where a person agrees, by parol, to reward another for past services by testamentary bequest, the agreement is not within that branch of the statute of frauds relating to agreements not to be performed within one year. 1870. *Jilson v. Gilbert* (26 Wis. 637), VII, 100.

V. TRUSTS.

38. **Parol trust.** If A voluntary conveys land to B, the latter having taken no measure to procure the conveyance, but accepting it, and verbally promising to hold the property in trust for C, the case falls within the provision of the statute of frauds requiring trusts to be expressed in writing, and a court of equity will not enforce the parol promise. 1869. *Lantry v. Lantry* (51 Ill. 458), II, 810.

STATUTE OF LIMITATION—See LIMITATION OF ACTIONS.

STATUTES.

1. **Extrinsic evidence to impeach.** Where an act of the legislature has been duly signed, certified and published, evidence is inadmissible to show an error in the engrossing. 1870. *Mayor v. Harwood* (32 Md. 471), III, 161.

2. — If a law has been regularly promulgated according to the forms of the constitution, its invalidity will not be examined or passed upon by the judiciary on alleged irregularities or informalities committed by the general assembly in passing it, nor will parol evidence be received to show that the general assembly have not complied with the requirements of the constitution in passing it. 1871. *The Louisiana State Lottery Co. v. Richoux* (23 La. An. 743), VIII, 602.

3. **Construction.** Courts are authorized to declare legislative acts unconstitutional only when they are clearly, and beyond reasonable doubt, in violation of the constitution. 1869. *Stewart v. Supervisors* (30 Iowa, 9), I, 238; see, also, *Hanson v. Vernon* (27 Iowa, 28), id. 215.

4. — In a case of simple doubt as to whether a State law conflicts with the federal constitution, or not, the decision of the State court should be in favor of the validity of the State law. 1869. *Commonwealth v. Erie Railway Co.* (62 Penn. St. 286), I, 399.

5. **Expository statute.** The Supreme Court of Pennsylvania decided that under the laws, as to the opening of roads in Philadelphia, interest was to be

allowed on an award from the date of the assessment. By the act of 1867, the legislature provided that the award should be enforced "in the same manner as provided by law in the opening of roads in the city of Philadelphia." By the act of 1869, the legislature declared that the true intent and meaning of the act of 1867 were "that no interest shall be allowed on damages for ground taken, up to the time of their payment on the issue of any warrant for their payment by the city of Philadelphia." In a case arising under the act of 1867, *held*, that the act of 1869, an expository act, was destitute of retroactive force, because it was an act of judicial power, and was in contravention of the constitution of the State, which declares that no man can be deprived of his property "unless by the judgment of his peers or the law of the land." 1871. *Haley v. City of Philadelphia* (68 Penn. St. 45), VIII, 158, and *note*, 166.

6. Title. An act of the general assembly will not be declared void because its objects are not set forth in its title, if the title discloses the objects of the act in terms so clear that no one can be misled thereby. 1871. *Louisiana State Lottery Co. v. Richoux* (28 La. An. 78), VIII, 602.

7. — Subjects subordinate to, and having a necessary or natural connection with the primary or leading subject of a bill, may be included in a bill without rendering the act double or multifarious in the sense of the constitutional prohibition. 1872. *Mills v. Charleston* (29 Wis. 400), IX, 578.

8. Defendant was proceeded against for violation of a statute which had been repealed by a later statute, but which provided that nothing therein contained should affect "any penalty or forfeiture already incurred under the provisions of any law in force prior to the passage of this act." The offense alleged occurred before the latter statute took effect, but after its approval by the governor. *Held*, that the indictment was sustainable. 1871. *Commonwealth v. Bennett* (108 Mass. 80), XI, 804.

9. Acts judicial in character. The legislature has no authority to pass a law in which it exercises judicial powers, by determining the rights of parties. 1872. *State v. Tappan* (29 Wis. 664), IX, 622.

See CONSTITUTIONAL LAW.

STOCK.

1. The holder of "preferred and guaranteed stock in the H., P. & F. R. R. Co. being entitled to preferred and guaranteed dividends, at the rate of ten per cent per annum, payable semi-annually, before any dividend shall be paid on other stock of said company," is entitled to this sum, payable only out of the earnings of the company which are legally applicable to the payment of dividends. 1856. *Taft v. Hartford, Providence and Fishkill Railroad Co.* (8 R. I. 810), V, 575.

2. Conversion by bailee. A bailee of certificates of stock sold the same for his own use and afterward tendered to the bailor other like certificates of stock in the same company, which were refused. *Held*, that the bailee was not liable for a conversion of the stock. 1871. *Atkins v. Gamble* (42 Cal. 86), X, 282.

3. A certificate of stock transferred in blank is not a negotiable instrument. 1868. *Shaw v. Spencer* (100 Mass. 882), I, 115.

4. Pledge by trustee. Where one holding certificates of stock in his own name as "trustee" pledges them for his own debt, the term "trustee" is a sufficient notice to the pledgee of the trust and he takes them at his peril. 1868. *Shaw v. Spencer* (100 Mass. 882), I, 115.

5. — The owner of stock certificates, fraudulently pledged by one holding them as trustee, is not estopped from claiming them of the pledgee by standing by, after having notified the pledgee of his claim and demanding the stock, and without protest witnessing the pledgee pay an assessment theretofore made on the stock. *Id.*

STOCK CONTRACTS — See CONTRACT.

STOLEN PROPERTY.

1. Stolen bonds. The purchaser in good faith and for value of stolen negotiable bonds obtains good title thereto. 1872. *Welsh v. Sage* (47 N. Y. 143), VII, 428.

2. Stolen coupons. Conversion will not lie against one who has received, in good faith, and without gross negligence, stolen coupons of United States bonds, and has sold them and paid over the proceeds to his principal. 1869. *Spooner v. Holmes* (102 Mass. 508), III, 491.

3. A purchaser of stolen goods, either directly from the thief or from any other person, although in the ordinary course of trade and in good faith, will not acquire title as against the owner; and a carrier or bailee stands in no better position than a purchaser. 1871. *Bassett v. Spofford* (45 N. Y. 387), VI, 101.

4. — C contracted with B for the purchase of goods to be paid for on delivery; C fraudulently obtained possession of them and afterward feloniously removed them, and placed them in charge of a carrier. *Held*, that B could recover them from the carrier. *Id.*

5. Action for value of. The right of action against a thief to recover the value of stolen property is not suspended until the determination of a criminal prosecution against the offender. 1869. *Houk v. Minnick* (19 Ohio St. 462), II, 418.

See REWARD.

STOPPAGE IN TRANSITU.

1. Where goods are sold on condition that title shall not pass until they are paid for, the vendor retains the right of stoppage *in transitu* as against the vendee, or an innocent third person who purchases of the vendee before the arrival of the bill of lading or the goods. 1870. *Pattison v. Cutton* (33 Ind. 240), V, 199.

2. In hands of carrier. B. & Co., of New York, sold on credit, and consigned in the ordinary way to "Geo. T. Hull, Youngstown, Ohio, A. & G. W. R. R.," goods which arrived at the Youngstown station and were transferred by the railroad company's agent to its freight depot, where they awaited payment of

charges as a condition precedent to their removal by draymen to Hull's place of business. On the evening of the day of the arrival of the goods they were seized in attachment at the suit of the creditors of Hull. *Held*, that B. & Co. might assert the right of *stoppage in transitu*. 1871. *Calahan v. Babcock* (21 Ohio St. 281), VIII, 68.

STREET—*See* HIGHWAY; MUNICIPAL CORPORATION.

STREET RAILROAD—*See* ASSESSMENT; HIGHWAY; MUNICIPAL CORPORATION.

SUPPLICAVIT.

1. Origin and character of the writ of *supplicavit* stated. 1868. *Adams v. Adams* (100 Mass. 365), I, 111.

2. Courts of equity will not entertain a petition for such writ where the party applying therefor has grounds for a divorce *a mensa* because of ill-treatment, although she has conscientious scruples against applying for a divorce. *Ib.*

SUBJACENT SUPPORT—*See* EASEMENTS.

SUBROGATION—*See* INSURANCE.

SUBSCRIPTION.

A person subscribed toward the payment of a debt due for the building of a church, and the trustees borrowed money to pay the debt on the faith of the subscription. *Held*, that the subscriber was bound. 1870. *Trustees v. Garvey* (58 Ill. 401), V, 51.

See CONTRACT.

SUBTERRANEAN WATER—*See* WATER AND WATER-COURSES.

SUICIDE—*See* INSURANCE.

SUNDAY.

1. *Travel on Sunday—defect in highway—action for.* A person traveling on the Sabbath day to the house of a friend for pleasure is so far in violation of a law against traveling on the Sabbath day, unless for charity or necessity, that he cannot maintain an action against a town for injuries from a defect in the way. 1869. *Cratty v. City of Bangor* (57 Me. 428), II, 56.

2. — *injury from defect in highway.* Plaintiff was traveling from A. to L., a distance of eight miles, on Sunday, to visit his two boys, when he was injured by insufficiency in the highway. In an action against the town, *held*, that a recovery would not be defeated by statute prohibiting travel on Sunday, except for attendance at places of moral instruction and from necessity. 1871. *McClary v. Lowell* (44 Vt. 116), VIII, 366, and *note*, 367.

3. Plaintiff was driving his cattle to market on a Sunday, when they were injured by the breaking down of defendant's bridge. At the trial the court

granted a nonsuit, on the ground that when the injury occurred plaintiff was violating the statute prohibiting the doing of secular work on Sunday. *Held*, error. 1871. *Sutton v. Town of Wauwatosa* (39 Wis. 21), IX, 534, and *note*, 544.

4. **Travel on Sunday — Spiritualist meeting.** Plaintiff was injured on defendant's road while returning, on Sunday, from a Spiritualist camp meeting. *Held*, that it was for the jury to say whether the meeting was of a religious character, and whether the plaintiff attended it for the purpose of divine worship and religious instruction, so as to bring him within the exception of the act prohibiting traveling on Sunday. 1872. *Feital v. Middlesex R. R. Co.* (109 Mass. 898), XII, 720.

5. **A promissory note, bearing the date of a secular day, is valid in the hands of a bona fide holder for value, although, in fact, made and delivered on the Lord's day, and, therefore, invalid as between the original parties.** 1871. *Orason v. Goss* (107 Mass. 489), IX, 45.

6. **The owner of a horse let it on the Lord's day, to be driven for pleasure to a particular place. The hirer drove it to a different place, and in doing so injured it. Held**, that although the contract of hiring was illegal and void, the owner could maintain tort for the conversion of the horse. 1871. *Hall v. Corcoran* (107 Mass. 251), IX, 80.

7. — **An action on the case for injuries to plaintiff's horse by reason of the defendant's neglect and careless driving during a pleasure drive on Sunday, for which he was hired, held**, not maintainable. 1872. *Parker v. Latner* (60 Me. 528), XI, 210, and *note*, 212.

8. **Action will not lie on contract made on Sunday.** A and B made a trade on the Lord's day, whereby A sold B a set of jewelry, and B gave in exchange a coat. A few days after B returned the jewelry and demanded the coat, and, on refusal, brought action to recover its value. *Held*, that the transaction being on the Lord's day was illegal and that the plaintiff could not recover. 1869. *Myers v. Meinrath* (101 Mass. 366), III, 368, and *note*, 371.

9. **Lex loci contractus — presumption.** Where a note was made and delivered in the purchase of a mining privilege at Pike's Peak, in Kansas, on the Sabbath day, and suit thereon is brought in the courts of this State, and there is no evidence of the *lex loci contractus* produced on the trial, *held*, that the presumption of law is, that the law of the place where the note was made is the same as our own; especially will such presumption be made where a contrary presumption would be unjust to the Christian civilization of the age, and in violation of the decalogue. 1871. *Hill v. Wilker* (41 Ga. 449), V, 540.

10. — **As the laws of this State forbid, under penalties, any violation of the Lord's day by the transaction of any business, trade or calling, a note made upon the Sabbath day, in pursuance of trade or business, will not be enforced by the courts of this State under the laws of this State, as such contract is void.** *Ib.*

11. **Sale on Sunday.** To an action on an account annexed for the purchase price of pigs, the answer set up a breach of warranty and that the contract was made on the Lord's day. The defendant's evidence tended to prove that the

sale was completed on that day and the pigs selected and marked, and that they were delivered on Monday, in pursuance of the contract. The plaintiff's evidence was that he refused to sell them on Sunday, but did name his price. The pigs were delivered on Monday, but no price was then named, nor does it appear that any thing was said about the terms of payment. The judge instructed the jury, that, laying out of the case all that transpired on Sunday, if they were satisfied from the delivery and acceptance of the pigs on Monday that a sale was made on that day, then the plaintiff could recover their actual market value at the time of the sale, without reference to the price named on Sunday or the warranty then given. *Held*, that the case was properly submitted to the jury under these instructions. 1869. *Bradley v. Rea* (103 Mass. 188), IV, 524.

12. **Account stated for liquor sold on Sunday.** It is not a bar to an action on an account stated that the indebtedness was for liquor sold on Sunday, contrary to law, provided the account was not stated on Sunday. 1872. *Melchoir v. McCarty* (81 Wis. 252), XI, 605.

13. **Evidence of an admission made on Sunday of a part payment of a promissory note on a week day, is admissible.** 1869. *Beardsley v. Hall* (36 Conn. 270), IV, 174.

14. **Rescinding contract on Sunday.** A contract which could not be lawfully made on Sunday cannot, if lawfully made, be rescinded on that day. 1872. *Benedict v. Batchelder* (24 Mich. 425), IX, 180.

SURETY.

1. **Obligation of surety.** The surety is bound with his principal as original guarantor, and his obligation to pay is equally absolute, irrespective of any notice of the principal's default, while a guarantor is an individual contractor, to answer only for the consequences of the default of the principal, and is therefore entitled to notice of such defaults. 1869. *McMillan v. Bull's Head Bank* (32 Ind. 11), II, 828.

2. **The sureties to a bond are not holden if the instrument is not executed by the person whose name is stated as the principal therein.** 1871. *Russell v. Annable* (109 Mass. 72), XII, 665.

3. **Contribution by co-sureties.** The parties were sureties on an official bond, upon which judgment had been recovered and paid by the plaintiff. In an action against the co-sureties for contribution, the latter alleged, in defense, that they had never been served with process, nor appeared in the action on the bond; that the plaintiff had appeared for them without authority, and suffered judgment to be entered, to defraud them; that he had, without their knowledge, entered into a special contract with the relators in that action to pay the judgment out of funds then in his hands, belonging to the principal on the bond, and, in consideration of such agreement, received an extension of one year's time on said judgment; that but for such extension of time the judgment could have been made out of the property of the principal. *Held* that these facts did not constitute a defense to the action. 1869. *Bagott v. Mullen* (32 Ind. 332), II, 351.

4. — The defendants further alleged that they signed the bond out of which the liability arose at the request of the plaintiff. *Held*, that they were, nevertheless, liable to contribution. *Ib.*

5. **Restraining co-surety from disposing of his property.** A surety, before he has paid the debt of his principal, or more than his aliquot portion of it, is entitled to an injunction restraining a co-surety from a fraudulent disposition of his property, the principal being insolvent. 1871. *Bowen et ux. v. Hoskins, admr.* (45 Miss. 183), VII, 728.

6. **A surety may pay the debt and prosecute his principal;** and one who for value transfers a debt or security, and thereupon becomes guarantor or indorser, may thus protect himself against the consequences of delay in enforcing the principal obligation; but he cannot, by notice, impose upon the creditor or holder the duty of active diligence at the risk of discharging the surety by omitting it. 1871. *Wells v. Mann* (45 N. Y. 327), VI, 93.

7. **Subrogation — notice to sureties of defalcation.** The general agent of an insurance company appointed a local agent, and took from him a bond in the name of the company, with sureties, conditioned that the local agent should pay over all moneys received by him. The local agent having made default in paying over certain moneys received for premiums, the general agent paid the same in accordance with his contract with the company. In an action upon the bond, in the name of the company, for the use of the general agent, *held*, (1) that the payment by the general agent did not discharge the bond so as to prevent subrogation; (2) that notice to the sureties of defalcation of the principal was not necessary in order to charge the sureties. 1870. *Hough v. The Anna Life Ins. Co.* (57 Ill. 818), XI, 18.

8. **While a creditor cannot release or compound with the principal debtor without discharging the surety,** before a surety can be exonerated from his responsibility upon the ground that there has been an unauthorized indulgence given or composition made with the principal debtor, it must be shown that it has been effected by express agreement, founded upon a valid consideration and legally binding on the creditor. 1869. *Oberndorf v. Union Bank of Baltimore* (31 Md. 126), I, 81.

9. **Part payment of the amount due will not discharge the surety,** even where it is agreed that such part payment shall have that effect. Where a party is bound to pay a certain sum there is no consideration in contemplation of law for a promise that a less sum shall be received in satisfaction. *Ib.*

10. **Bankruptcy of principal.** The sureties in an attachment bond are released by the discharge in bankruptcy of the principal, before judgment is rendered against him. 1870. *Payne v. Able* (7 Bush. Ky. 344), III, 816.

11. **The mere omission by the holder of a promissory note to present it to the assignee (for benefit of creditors) of the principal will not discharge the surety.** 1871. *Dye v. Dye* (21 Ohio St. 86), VIII, 40.

12. **Death of surety discharges his estate.** Upon the death of one of the makers of a joint promissory note, who signed as surety only, and who was not liable for the debt, irrespective of the joint obligation, his estate is absolutely

discharged both in law and in equity. 1872. *Getty v. Binnes* (49 N. Y. 885), X, 879.

13. In a suit against a cashier of a bank, and his sureties on their bond where the defendants pleaded severally, it is no defense to the suit that the directors have been negligent in examining his accounts. To avoid the bond on the ground of fraud on the part of the bank or its directors, there must be a fraudulent concealment of something material for the surety to know. 1869. *Atlas Bank v. Brownell* (9 R. I. 168), XI, 281.

14. Discharge of sureties on bail bond. C was arrested on a criminal charge in the State court and was bailed. He was subsequently arrested and imprisoned for another crime by the military authorities of the United States, and could not be produced in the State court according to the terms of the recognizance. Held, that the sureties were discharged. 1869. *Belding v. State* (25 Ark. 815), IV, 26.

15. — In an action on a forfeited recognizance, the defense was, that the criminal could not appear when called, because he was in prison in another State. It appeared that he had gone to New York, after his release, and had been taken to Maine, under a requisition from the governor of that State, to answer for a crime committed there. Held, no defense. 1869. *Taintor v. Taylor* (36 Conn. 242), IV, 58.

16. Notice to sureties. A, B and C executed to the plaintiff, a bank, a joint and several bond, in the penalty of \$15,000, with a condition reciting that A had become a member of a certain firm, rendering it probably necessary for him to use more funds in the business than he had at command, and which he proposed to borrow, and then proceeding thus: "Now the foregoing bond is to be in force, and binding upon us, according to its terms, for the full amount of any loans and advances the said bank may make to said A, in connection with his said business, not to exceed in amount \$15,000, for which sum, by the foregoing bond, we acknowledge ourselves his sureties, and, in case of his failure to pay any such loans or advances as aforesaid, that the same shall and may be collected of us. Unless such loans and advances are made to said A in his business aforesaid, upon the faith of this bond, the same is null and void," etc. The plaintiff alleged that, on the faith of this bond, and for the purpose therein specified, it loaned A a sum of money on the checks of two other parties, indorsed by A, and that these checks were protested for non-payment. Held, (1) that the bond was not an overture to guaranty by the sureties, but an actual undertaking; (2) that B and C were sureties, and not guarantors, and, therefore, not entitled to notice of loans made on the credit of the bond, and of the default of the principal debtor. 1869. *McMillan v. Bull's Head Bank* (82 Ind. 11), II, 828.

See BANKS AND BANKING; BANKRUPTCY.

Liability of sureties on bond of public officer — See OFFICER.

SURFACE WATER — See WATER AND WATER-COURSES.

TAXES AND TAXATION.

1. **A de facto government**, which is able to maintain its supremacy by its armies, may exercise the taxing power; and those who are subject to its control are bound to obedience. But if it assesses a tax, and is overthrown before it is collected, the rightful sovereign, whose power is established, will not enforce such assessment against the subjects of the government *de jure*. 1870. *O'Byrne v. Mayor* (41 Ga. 331), V, 532.

2. — In such case, those who have paid the tax to the *de facto* government while it was supreme have no means of recovering it back; and those who did not pay till its overthrow are under no obligation to pay. *Id.*

3. **By municipal corporation.** The right of taxation is inherent in the sovereign. So far as it exists in a municipal corporation, it is by grant, and is called a franchise. 1870. *O'Byrne v. Mayor, etc., of Savannah* (41 Ga. 331), V, 532.

4. **National bank stock.** The owner of stock in a national bank is taxable in the city or town where he resides, and not where the bank is located. 1870. *Clapp v. City of Burlington* (42 Vt. 579), I, 355.

5. **The circulating notes of national banks**, known as "national currency," are not exempt from taxation by a State. 1869. *Board of Commissioners of Montgomery County v. Elston* (32 Ind. 27), II, 327.

6. **Taxation of bank shares.** By the statute of June, 1868, chapter 349, of Massachusetts, entitled "An act concerning the taxing of bank shares," it was provided that the shares in national banks, owned by non-residents of the commonwealth, shall be assessed to the owners thereof in the cities or towns where the banks are located; that the rate of taxation shall be the same as on other moneyed capital; that the value of such shares shall be omitted from the valuation upon which the rate is to be based, and that the act shall "apply to taxes assessed and collected for the present year in the same manner and to the same effect as if it had been in force on the first day of May." *Held*, that the act was not unconstitutional, either as being in violation of the act of congress of 1864, chapter 106, section 47, and 1868, chapter 7, or as levying a tax in a disproportional manner, or as being retrospective in its operation. 1869. *Providence Institution v. Boston* (101 Mass. 575), III, 407.

7. **Internal revenue stamps** are exempt from State and local taxation. 1869. *Palfry v. City of Boston* (101 Mass. 329), III, 364.

8. **The stocks and bonds of an inter-State railway** are liable to taxation by any State in which it is situate in proportion to the length of the road in such State. 1870. *Pittsburg, Fort Wayne and Chicago R. R. Co. v. Commonwealth* (66 Penn. St. 73), V, 344.

9. **Upon railway corporation.** The Pennsylvania portion of the Erie railway was constructed under a law of that State, by which it was compelled to pay for its franchise a fixed annual sum, and to submit to taxation on its stock. *Held*, that this did not preclude the State from levying a further and general tax upon the corporation. 1870. *Erie Railway Co. v. Commonwealth* (66 Penn. St. 84), V, 351.

10. **On non-residents selling by sample.** A State statute forbid persons, not residents of the State, to sell goods not manufactured in the State, by card or sample without a license. *Held*, constitutional. 1869. *Ward v. State* (81 Md. 279), I, 50.

11. **A resident of Iowa had deposited for safe-keeping in Illinois promissory notes that had never been brought by him into Iowa.** *Held*, that they were subject to taxation in Iowa. 1871. *Hunter v. The Board of Supervisors* (33 Iowa, 876), XI, 182.

12. **For private purposes.** An act of the legislature, authorizing a town to raise by tax a sum of money for the use and benefit of a private educational institution, is unconstitutional and void. 1869. *Curtis' Admr. v. Whipple* (24 Wis. 350), I, 187.

13. — The fact that an educational institution is incorporated does not render it public, so far as relates to the power of taxation for its aid. *Id.*

14. **No surrender of the general power of taxation by any legislative act can be implied.** 1870. *Erie Ry. Co. v. Commonwealth* (86 Penn. St. 84), V, 351.

15. **A tax duly assessed is not a debt within the meaning of that provision of the constitution which prohibits the legislature from passing any law impairing the obligation of a contract.** 1869. *City of Augusta v. North* (57 Me. 392), II, 55.

16. — An act exempting certain manufacturers from taxation is not a contract and may be repealed. 1869. *East Saginaw Manufacturing Co. v. East Saginaw* (19 Mich. 259), II, 82; *Lord v. Litchfield* (36 Conn. 116), IV, 41.

17. **Taxes when an incumbrance.** Taxes were assessed on land May 1; the tax bill was issued to the collector October 1. *Held*, that the taxes were an incumbrance on the land from May 1. 1870. *Ochran v. Guild* (106 Mass. 29), VIII, 296, and *notes*, 297.

18. **Notice to mortgagee.** Notice of levy and sale of lands for taxes must be given to the mortgagee. 1873. *Whitahurst v. Gaskill* (69 N. C. 449), XII, 655.

19. **Lien of State.** A sale of lands by an assignee in bankruptcy does not divest the lien of the State for taxes. 1872. *Stokes v. State* (46 Ga. 412), XII, 588.

20. **Tax by Confederate government.** A note given since the war to the mayor and council of Savannah, for tax assessed by the city authorities during the existence of the Confederate government, but not collected, is void for want of consideration. 1870. *O'Byrne v. Mayor* (41 Ga. 331), V, 532.

21. — A note given for such tax, and for ground-rent due the city, by contract made prior to the war, is void as to the tax, but good as to the rent. The consideration is clearly severable, as the record shows precisely how much it was for tax, and how much for rent. *Id.*

22. **Action to recover back illegal tax.** An action in assumpsit will not lie against a town for money paid, under protest, by a resident owner for taxes on real estate, where the only objection is, that "the assessments were not legally

made." It seems that the proper course for the tax payer is to refuse to pay the taxes, and, when the land is sold by the collector, to defend his title. 1870. *Rogers v. Inhabitants of Greenbush* (58 Me. 390), IV, 293.

23. **Tax-deed.** A county treasurer, [having given an imperfect tax-deed, which does not pass title, may afterward of his own motion give a second and corrected deed. 1870. *McCready v. Sexton* (29 Iowa, 356), IV, 214.

24. A statute declaring a tax-deed conclusive evidence, that all of the essential requirements of the law regulating the exercise of the taxing power were complied with; *held*, unconstitutional. *Id.*

25. **Void tax-deed—statute of limitation.** Land not taxable was levied upon and sold for taxes. *Held*, that the tax-deed was absolutely void, and that, therefore, the statute of limitations did not run in favor of the holder of the deed from the date thereof, and against the original owner of the land or his grantee. 1870. *Taylor v. Miles* (5 Kan. 498), VII, 558.

26. — For a discussion of the taxing power of the legislature, see *Hanson v. Vernon*, 1869 (27 Iowa, 28), I, 215; *Stewart v. Supervisors of Polk County* (27 Iowa), *id.* 238; *People v. Salem* (20 Mich. 452), IV, 400; *Whiting v. Sheboygan R. R. Co.* (25 Wis. 67), III, 80.

See BANKS AND BANKING; CERTIORARI; CONSTITUTIONAL LAW;
MUNICIPAL CORPORATION.

TAX COLLECTOR.

A tax collector, whose statutory duty was, after selling a distress, to deduct the tax and expense of sale, and restore the balance to the former owner, applied a portion of the proceeds in payment of a tax already paid, and of illegal charges, before returning the balance. *Held*, an abuse of authority which rendered him a trespasser *ab initio*. 1871. *Carter v. Allen* (59 Me. 296), VIII, 420.

TELEGRAPH.

1. **Erection of line on land of railroad company.** An act authorizing a telegraph company to erect its line on the land of a railroad company, without making due provision for enforcing the payment of damages, is unconstitutional. 1872. *Southwestern R. R. Co. v. Southern and Atlantic Telegraph Co.* (46 Ga. 48), XII, 585.

2. **Not a common carrier.** A telegraph company is not liable as a common carrier, but only for want of proper care and attention. 1870. Per HUNT, J. *Leonard v. New York, etc., Telegraph Co.* (41 N. Y. 544) I, 446.

3. **Liability as to message for point beyond its line.** Where a telegraph company receives a message to be transmitted to a point beyond its own line and on connecting line, it undertakes for care and attention in transmitting it over its own line, and for its prompt delivery to a competent and responsible company for further transmission. When so delivered its liability terminates, and that of the receiving company begins. 1870. Per HUNT, J. *Leonard v. The New York, Albany & Buffalo Telegraph Co.* (41 N. Y. 544), I, 446.

4. — No partnership or mutual agency can be inferred between co-terminus lines of telegraph, from the fact that each received from the other messages for transmission over its own line, as required by law; and each, in the absence of evidence of a special agreement or arrangement, either with the sender of the message or with each other, will be liable for its own acts only. 1871. *Baldwin v. United States Telegraph Co.* (45 N. Y. 744), VI, 165.

5. Liable for negligence — condition against liability. A telegraph company, notwithstanding special printed conditions at the head of the dispatch sent, exonerating it therefrom, is responsible for mistakes happening in consequence of its own fault, such as want of proper skill or ordinary care on the part of its operators, or the use of defective instruments, but is not, under those conditions, responsible for mistakes occasioned by uncontrollable causes, such as atmospheric electricity, provided these mistakes could not have been ascertained and guarded against, or prevented by the exercise of ordinary care and skill on the part of the operating agents of the company. 1869. *Sweetland v. Illinois, etc., Telegraph Co.* (37 Iowa, 438), I, 285.

6. Cannot stipulate against liability for negligence. Telegraph companies cannot adopt general printed rules, exacting, as a condition of sending messages, that the sender shall exonerate or release the company from damages caused by defective instruments, or by want of proper skill in the operators, or by their failure to use due care. *Id.*

7. — A condition in a blank message that the company shall not be liable for mistakes or delays in the transmission or delivery or for non-delivery of a message beyond the amount received for sending the same, *held*, unreasonable, and not binding in case of non-delivery. 1872. *Trus v. International Telegraph Co.* (60 Me. 9), XI, 156, and *note*, 168.

8. Conditions in telegraphic messages as to repeating are reasonable; and where a person writes a dispatch and signs his name upon a blank containing a printed condition that the company will not be responsible for the correct transmission of a message unless it is repeated at an additional expense, he cannot recover for an error in transmission, the condition as to repeating not being complied with, and there being no allegation of gross negligence or willful misconduct on the part of the company. 1871. *Brees v. United States Telegraph Co.* (48 N. Y. 182), VIII, 526, and *note*, 532.

9. — A condition, requiring a party who desires a message to be sent with absolute correctness to have the same repeated, is a proper one, and where the condition as to repeating exists, and is known to the party, or where he is bound to take notice of it, and a mistake occurs in an unrepeatable message, the mere proof of such mistake, without some other evidence of carelessness on the part of the company, will not make it liable. It must be shown that the mistake was caused by the fault of the company. 1869. *Sweetland v. Illinois, etc., Telegraph Co.* (37 Iowa, 438), I, 285.

10. — A telegraph company cannot, by a notice printed on a blank on which a message is written that it will not be liable unless the message is repeated, relieve itself from liability for a negligent failure to deliver a

message, not repeated, after it was received at the office to which it was addressed. 1871. *Western Union Telegraph Co. v. Graham* (1 Colorado, 230), IX, 186, and *note*, 149.

11. — In an action against a telegraph company by the sender of an unrepeated dispatch, to recover the statutory penalty for failure to transmit it, *held*, that a regulation of the company limiting its liability in such cases to the amount paid for transmission, and of which plaintiff had no notice, was no defense. 1871. *Western Union Telegraph Co. v. Buchanan* (85 Ind. 429), IX, 744.

12. Conditions on printed form. A telegram, written upon a printed form containing certain terms, and subscribed by the sender, amounts to an agreement on the part of the sender that the telegram shall be sent according to such terms. 1869. *Wolf v. Western Union Telegraph Co.* (62 Penn. St. 83), I, 387.

13. Evidence of negligence. A mistake in the transmission of a telegram is *prima facie* negligence on the part of the company, and the burden of proof rests upon it to show itself free from fault. 1870. *Rittenhouse v. The Independent Line of Telegraph* (44 N. Y. 263), IV, 673.

14. Negligence of operator — fraudulent check. A telegraph operator of T. received a message dated at E. and addressed to bankers at P., which read as follows: "Keystone bank will pay the check of T. F. McCarthy to the amount of twenty thousand dollars (\$20,000). J. J. Town, cashier of Keystone bank." The person presenting the message was known to the operator by the name of McCarthy, but no authority from the cashier was shown. The message was transmitted, and proved to be fraudulent. *Held*, that the operator was guilty of gross negligence, for which the telegraph company was liable. 1871. *Elwood v. The Western Union Telegraph Co.* (45 N. Y. 549), VI, 140.

15. It is gross negligence in a telegraph company to employ an operator who is ignorant of the existence of a county town which is one of the stations on its line. 1871. *Western Union Telegraph Company v. Buchanan* (35 Ind. 429), IX, 744.

16. Limitation of action. A condition that a telegraph company "will not be liable for damages in any case where the claim is not presented in writing sixty days after sending the message," is neither contrary to law, unreasonable, nor contrary to public policy. 1869. *Wolf v. Western Union Telegraph Co.* (62 Penn. St. 83), I, 387.

17. Measure of damages. Plaintiff's agent in Chicago telegraphed to his agent in Oswego for 5,000 sacks of salt. By the carelessness of the operator the telegram was made to read "casks;" and 5,000 casks were sent, for which there was no market in C., and which were sold at a loss. In an action against the telegraph company for damages arising from the mistake, *held*, that the measure of damage was the difference between the market value at O. and at C., together with the cost of transportation from O. to C. GROVER, J., *dissentiens*. 1870. *Leonard v. New York, etc., Telegraph Co.* (41 N. Y. 554), I, 446.

18. — *Held*, also, that the failure of the plaintiffs' agent at Oswego to attempt to withdraw the shipment, on learning the mistake, after the goods had been shipped, and, as he supposed, had actually gone, but in fact, as afterward appeared, before they had gone, was not such legal negligence as would prevent the plaintiffs' recovering. *Ib.*

19. — A message as *delivered* by plaintiff to a telegraph company read: "If we have any Old Southern sell same before board. Buy five Hudson at board;" but the message as *transmitted* read: "If we have any Old Southern, sell same before board. Buy five hundred at board." Plaintiff's agent, who received the message, bought five hundred Old Southern; but plaintiff, hearing of this, immediately directed the sale thereof, and the purchase of five hundred shares Hudson River, according to the intention of the original message as delivered. In the meantime Hudson River had risen, making a difference to plaintiff of \$1,375. In an action against the company for damages, *held*, that plaintiff could recover, and that the measure of damages was the rise in the price of the stock. 1870. *Rittenhouse v. Independent Line of Telegraph* (44 N. Y. 268), IV, 678.

20. — Where a telegraph company receives, for transmission, a message without notice or information, either from the contents of the message or otherwise, of any fact indicating that extraordinary care or speed in its dispatch or delivery is important or expected, or that extraordinary or special damages will result from any neglect of care, or accuracy, in transmitting it, the measure of damages for non-delivery is limited to such damages as result from the ordinary and obvious purpose of the contract. 1871. *Baldwin v. United States Telegraph Co.* (45 N. Y. 744), VI, 165.

21. — In an action against a telegraph company for damages for the non-delivery of a telegram, requesting oil to be shipped "as soon as possible," the plaintiff may recover the cost of the message, the advance in the price of freight, and his expenses incurred by reason of the failure to deliver the message, but not the profit that he might have made on the oil had the message been delivered and the oil sent in due time. 1871. *Western Union Telegraph Co. v. Graham* (1 Colorado, 280), IX, 136, and *note*, 149.

22. — Plaintiff, having received an offer of a cargo of corn at 90 cents a bushel, delivered to defendant — a telegraph company — for transmission, a message in reply to the offer, written on a "night-message blank," in these words: "Ship cargo named at 90, if you can secure freight at ten — wire us the result," and paid 48 cents, the rate for night messages, and which was less than the day rates. The blank contained the following printed condition: "It is agreed between the sender of the following message and this company, that the company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery of any message, beyond the amount received by said company for sending the same." The message was sent, but was not delivered; by reason whereof, the plaintiff failed to obtain the corn at the terms offered, and the price of corn and freight having advanced, plaintiff was compelled to purchase at higher terms. *Held*, that, assuming that the corn would have been forwarded at the terms named but for the non-delivery of the

message, the measure of damages was the difference between the price stated and that which the plaintiff would have been obliged to pay at the same place in order by due diligence, after notice of the failure of the telegram, to purchase the like quantity and quality of corn, together with the additional freight. 1872. *True v. International Telegraph Co.* (60 Me. 9), XI, 156, and *note*. 168.

TENANT — *See* LANDLORD AND TENANT.

TENANTS IN COMMON.

1. The undivided interests of a tenant in common in distinct freeholds may be sold separately. 1872. *Butler v. Royes* (25 Mich. 53), XII, 218.

2. — Judgment was recovered against C, who was a tenant in common with others, of several distinct parcels of land in the same county. Execution was levied on a part of the parcels only, and they were sold separately to plaintiff. In ejectment by plaintiff, defendant claimed title under a subsequent voluntary partition between the tenants in common. *Held*, that the parcels of land being distinct freeholds, C's interest in each might be sold separately; that the plaintiff, not having been a party to the partition, was not affected thereby, and that therefore plaintiff was entitled to recover. *Ib.*

3. The undivided interest of a tenant in common of chattels may be seized and sold by an officer under attachment, if the property is severable; and if the tenant's share is exempt from such seizure, he may maintain his action alone to vindicate his exemption rights. 1872. *Newton v. Howe and Drury* (29 Wis. 531), IX, 616.

4. — Where A enters into an agreement with B to save from a wrecked vessel as much of the cargo as could be saved, and B agrees to allow him, for his services, such a per cent of the property saved, as compensation; and in pursuance of such agreement, A recovers from the wreck a portion of the cargo and lands it on the beach in a place of safety; *held*, that A and B are tenants in common of the property so saved, and that the undivided share of A is liable to be seized by the sheriff under a warrant of attachment. 1878. *Boylston Ins. Co. v. Davis* (68 N. C. 17), XII, 624.

5. Sale by one tenant. Plaintiff and B. were tenants in common of land, plaintiff being in occupation. Defendant bought standing grass of plaintiff, to be paid for when cut and harvested. *Held*, that defendant could not avoid paying plaintiff the contract price, when due, on the ground that B. forbade payment. 1871. *Brown v. Wellington* (106 Mass. 318), VIII, 380.

6. Warranty in deed — action for breach. Tenants in common have several freeholds, and are not obliged to join in an action against their grantor for a breach of the covenants of warranty in his deed. 1871. *Lamb v. Danforth* (59 Me. 322), VIII, 426.

7. A and B and three others owned together a main aqueduct leading from a spring, and each one had his own branch aqueduct. In an action by A against B for using or wasting more than his fifth of the water, *held*, (1) that case sounded in tort, and not an action of account, was the proper form of action;

and (2) that the following charge of the jury was correct: "Did the defendant willfully and knowingly use or waste more than his one-fifth of the water, or knowingly suffer his family to do it, for the purpose of annoying or injuring the plaintiff, or with a wanton disregard or indifference to the inconvenience it might occasion the plaintiff? If the defendant did so, and thereby the plaintiff has suffered injury, then the defendant is liable." 1870. *McLellan v. Jenness* (48 Vt. 183), V, 370.

8. Use of property by one tenant—account. Where one of two tenants in common enters upon the joint premises and constructs a race-course which he uses exclusively, and cuts and takes away wood designed to be left growing upon the premises, he is liable as bailee to account to his co-tenant for the use of the race-course and for one-half of the wood. 1872. *Hayden v. Merrill* (44 Vt. 336), VIII, 372.

9. A statute provided that any person may take into his custody any animal trespassing upon land "owned or occupied" by him. Plaintiff let his farm to R. on shares, the stock being owned in common, both living in the house on the farm and furnishing the seed and receiving the crops in equal parts. Plaintiff seized animals trespassing on the farm. Held, that the terms "owned or occupied" implied an actual or constructive occupation, but that plaintiff was an occupant within the meaning of the statute. 1870. *Herskell v. Bushnell* (37 Conn. 86), IX, 299.

TENDER.

1. Of treasury notes. A tender of United States treasury notes will not discharge a note payable in American gold. 1870. *McGoon v. Shirk* (54 Ill. 408), V, 123.

2. Conditional. A tender made subject to the conditions that if accepted it must be in full payment of all claims is not good. 1871. *Draper v. Hitt* (48 Vt. 489) V, 292.

TENURE OF OFFICE—*See* OFFICE.

TESTAMENTARY CAPACITY—*See* WILLS.

TIME—*See* BANKRUPTCY; LIMITATION OF ACTIONS.

TONNAGE TAX—*See* CONSTITUTIONAL LAW.

TOWN—*See* HIGHWAY; MUNICIPAL CORPORATION.

TRADE-MARK.

1. Any word or phrase used in circulars, price lists or advertisements, to designate a manufactured article, but not placed upon the article, does not constitute a trade-mark. 1870. *Candee v. Deere* (54 Ill. 439), V, 125.

2. — The use of a trade-mark consisting of the words "Candee, Swan & Co.," in a semi-circular form above the words "Moline, Ill.," is no infringement upon a trade-mark consisting of the words "John Deere," in a semi-circular form above the words "Moline, Ill." *Id.*

3. — The term "Moline," in "Moline plow," is generic, Moline being the name of the place where the plow is manufactured, and is not susceptible of exclusive use as a trade-mark. *Ib.*

4. — The combination of letters and figures, A No. 1, A X No. 1, No. 1, X No. 1, No. 8, and B No. 1, respectively, used originally for the purpose of designating the quality of manufactured articles, are not susceptible of exclusive use as a trade-mark. *Ib.*

5. **Terms in common use.** The plaintiff gave to his place of business the name of the "Antiquarian Book Store," by which name it became widely known. The defendant, having a rival store, adopted substantially the same name. *Held*, that the name could not be appropriated as a trade-mark. 1870. *Choynski v. Cohen* (89 Cal. 501), II, 476.

6. **The owner of a peculiar product of nature, such as mineral water, will be protected in the exclusive use of a name given to it, and employed as a trade-mark.** The word "Congress" in the phrases "Congress Water" and "Congress Spring Water" is a legitimate trade-mark. 1871. *Congress & Empire Spring Co. v. High Rock Congress Spring Co.* (45 N. Y. 291), VI, 82.

7. **Figures.** Plaintiff had, for many years, manufactured and sold a steel pen, put up in boxes, with "808" and "Joseph Gillott, extra fine," upon the pens and boxes. Defendant began the manufacture and sale of a steel pen, put up in boxes with "808," and "Esterbrook & Co., extra fine," upon the pens and boxes. *Held*, that plaintiff had acquired the right to the exclusive use of the figures "808" as a trade-mark; and that an action would lie restraining defendants from using such figures in such manner. 1872. *Gillott v. Esterbrook* (48 N. Y. 874), VIII, 553.

8. **Geographical name.** Plaintiffs and their predecessors had, for many years, been engaged in manufacturing water-lime cement from quarries near Akron, Erie county, which was labeled and sold as "Akron cement," to which they had given a reputation in the market, and the defendants, knowing of such use by the plaintiffs of the word "Akron" as a trade-mark, and for the purpose of availing themselves of the reputation the plaintiffs' cement had acquired, applied the word "Akron" to designate a similar cement made by them at a quarry near Syracuse. *Held*, that the plaintiffs were entitled, as against the defendants, to protection in the exclusive use of the word "Akron," by injunction to restrain the use of it by the defendants. 1872. *Newman v. Alcord* (51 N. Y. 189), X, 588.

9. **Individual name.** The plaintiff corporation took its name from the names of its principal stockholders. Some of these stockholders afterward started a rival corporation and used their names, with the addition of one other, as its name. *Held*, that the plaintiff was entitled to protection in the use of said stockholders' names, and that defendants would be enjoined from using them. 1870. *Holmes v. Holmes* (37 Conn. 278), IX, 324, and *note*, 331.

10. — Three brothers named Rogers had acquired a reputation in the manufacture of plated spoons and forks. Petitioners purchased from them the right to manufacture and sell plated spoons and forks stamped with the name

"Rogers," and thereupon adopted and used as their trade-mark the words and figures: "1847, Rogers Bros., A 1." The said brothers were also employed by the petitioners in the manufacture of their goods. The goods so manufactured and stamped with the said trade-mark acquired a good reputation in the market. Subsequently three brothers of another family named Rogers, not previously engaged in the business, made an engagement with the respondent to manufacture for them, and also on his own account, plated spoons and forks. These were stamped "C. Rogers Bros., A 1," and "C. Rogers & Bros., A 1." It was found that these stamps resembled the petitioners' trade-mark to that degree that they were calculated to deceive, and did deceive "unwary purchasers;" that large quantities of respondents' goods had been sold by him upon the reputation of petitioners' goods, and that the respondent supposed that the resemblance of his stamp to the petitioners' would enable him more readily to sell his goods. *Held*, that the petitioners had a right to protection in the use of the stamp, "1847, Rogers Bros., A 1," as a trade-mark; and (2) that the respondent was violating that trade-mark by using a stamp so nearly resembling the petitioners', and that, therefore, respondent would be restrained from using his said stamp, and also from using the name "Rogers Bros." *Held*, also, that the use of the name "Rogers" would not be restrained. 1872. *Meriden Britannia Co. v. Parker* (89 Conn. 450), XII, 401, and *note*, 410.

11. — Under what circumstances one may be restrained from the use of his own name. See *note*, XII, 410.

12. **Damages.** In an action to recover for the violation of a trade-mark, the damages awarded was the whole profit realized by defendant from sales of the spurious articles under the simulated trade-mark. *Held*, on appeal by defendant, that the damages were not excessive. 1871. *Graham v. Plate* (40 Cal. 593), VI, 639, and *note*, 641.

TREES — See REAL PROPERTY.

TRESPASS.

1. **Trespass vi et armis** will lie for an unintentional injury caused by the glancing of a pistol ball shot at a mark. 1869. *Welch v. Durand* (86 Conn. 182), IV, 55.

2. **Justification — license.** In an action of trespass *quare clausum* and for assault, defendant pleaded that the *locus* was part of plaintiff's house, which had been used by him while postmaster as a post-office; that one G. having succeeded him in that office, had license for him to enter and remove the public property of the United States; that defendant, as assistant-postmaster and servant to G., and by his direction, attempted to enter for that purpose, but was resisted and assaulted by plaintiff, whereupon, etc. (justifying the trespass). *Held*, that the justification was good, and would have been so without averment of license. 1871. *Sterling v. Warden* (51 N. H. 217), XII, 80.

3. A party entering upon land in good faith, under the belief that he has the title thereto, is not a naked trespasser, though the title be in fact in another; and he is entitled to all legal protection to his improvements and property,

placed upon the premises, given by the statute to parties in possession under color of title. 1869. *Mississippi & Tennessee Railroad Co. v. Decaney* (42 Miss. 555), II, 608.

TRIAL BY JURY.

1. **Commitment without.** A statute authorizing a court, upon the recommendation of a grand jury, to commit an infant charged with crime to a house of refuge, without trial by jury, is constitutional. 1869. *Prescott v. State* (19 Ohio St. 184), II, 888.

2. **Communication between court and jury.** After a jury had retired to consider of their verdict, the court sent to them, in answer to their request, an instruction in writing, and, also, a copy of the statute, without the knowledge of counsel on either side. *Held*, error. 1878. *State v. Patterson* (45 Vt. 806), XII, 200.

3. **Reference.** Where, in an action, the accounts are all on one side and were set-offs on the other, and no discovery is sought, and the defense is payment and the statute of limitation, a court of equity will not direct a reference. 1869. *McMartin v. Bingham* (37 Iowa, 284), I, 265.

4. **Jury fee.** A statute requiring the party demanding a jury to pay the jury fee, and tax the same in his costs, if he prevail, is constitutional. 1878. *Randall v. Kehler* (60 Me. 87), XI, 162.

See JURY; NEW TRIAL; REFERENCE.

TROVER.

Plaintiff raked into heaps manure that had accumulated in the street, the fee of which was in the borough, intending to remove it. Before he could do so, and within twenty-four hours, defendant carted it away. *Held*, that plaintiff could maintain trover. 1871. *Haslem v. Lockwood* (87 Conn. 500), IX, 350.

TRUSTS.

1. **Where a trust results by operation of law, as, for instance, where there is a devise or bequest to a person "upon trust," and no trust is declared, etc., in such cases the trust results to the heirs at law or personal representatives, and extrinsic evidence will be rejected.** 1869. *Saylor v. Plains* (81 Md. 158), I, 84.

2. **Evidence of express trust — statute of frauds.** B. holding the legal title to real property, but upon a secret parol trust for his wife and her brother K., executed a deed thereof, absolute in form, in which his wife joined, to K., the brother, without any pecuniary consideration and without the knowledge or consent of K. B. caused the deed to be recorded. Subsequently, B. said to K.: "The property of your sister has been deeded to you, and I want you to look after her interests, and see that she has her property." K. replied, "all right," or "very well," or words to that effect. Afterward K., in a letter to his mother, and also in a document intended to be a will, incidentally recognized the conveyance as a trust. *Held*, that the assent of K. to the conveyance, in connection with the words of B. informing K. thereof, created an express trust.

in favor of B.'s wife, and that the subsequent letter and document were sufficient evidence of the trust within the statute of frauds. 1871. *Kingsbury v. Burnside* (58 Ill. 310), XI, 67.

3. — *Held*, also, that the existence of a trust having been established by a writing, parol evidence of conversations concerning the trust, between the trustee and brother, referred to in the writing, was admissible for the purpose of describing or defining what was meant by the writing. *Id.*

4. Implied trust. M. held a judgment against plaintiff for \$2,000, and offered to discharge it for \$500, but plaintiff did not accept the offer. R., a stranger to plaintiff, applied to M., and by falsely representing that he was acting for plaintiff, induced M. to assign the judgment to him (R.) for \$500. *Held*, that plaintiff had no interest in the transaction, and that he was not entitled to the benefit of the purchase of the judgment. 1871. *Garvey v. Jarvis* (48 N. Y. 310), VII, 385.

5. Investment of trust funds. By deed made in May, 1860, three bonds, secured by mortgages of real estate, were assigned to B, in trust, to invest the proceeds, as soon as received, "in such manner as the said B may think proper, on consultation with" the *cestui que trust*, and then to permit them to receive the income. The *cestui que trust* removed, shortly afterward, from South Carolina, where the trust was created, to New York, and remained there during the war with the Confederate States. In 1863 and 1868 B collected the bonds in Confederate treasury notes, then much depreciated, and invested the proceeds in bonds of the Confederate States, without consultation with the *cestui que trust*, with whom it was, at that time, impracticable to communicate. *Held*, that B committed a breach of trust, and that he was liable to account to the *cestui que trust* for the sums received. *Held, further*, that the obligors in the bonds were not liable to account to the *cestui que trust*, for that they were discharged by their payments to B. 1869. *Mayer v. Mordecai* (1 S. C. N. S. 383), VII, 26, and *note*, 83.

6. Trustees holding notes, given by other parties for the benefit of a railroad corporation, cannot refuse to surrender such notes to the beneficiary, simply on the ground that a condition named in such notes, the failure to comply with which would render them void, had not been complied with. 1869. *Des Moines Valley Railroad v. Graff* (37 Iowa, 99), I, 256.

7. Trust deed. R. & Co., having a debt against B, attached certain property then in possession of H., by virtue of a deed of trust executed to him by B, in favor of S. & B., and as appeared on the face of the instrument, to secure the payment of a \$40,000 note. It appeared, from an agreement bearing the same date, that the trust deed was intended to secure future advances as well as present liabilities; of which agreement the attaching creditor had no knowledge. The trustees gave a bond, and the right of property was tried. *Held*, that the deed of trust was valid, although it did not show upon its face that it was to secure future advances, and that the possession of the trustees was good against the claim of R. & Co., whose demand was contracted subsequent to the recording of the deed. 1869. *Summers v. Roos* (42 Miss. 749), II, 653.

8. — A by deed conveyed all her property, "both real and personal," to a trustee in trust, to pay the income to her during her life, and at her death to transfer the property as she should by will appoint and in default of such will to convey the property to her "heirs at law." The trust property was all personal. A died intestate. *Held*, that the trust property being personalty, the word "heirs" meant the persons entitled to take under the statute of distributions, and that therefore the property went to A's husband, and not to her child. 1872. *Sweet v. Dutton* (109 Mass. 589), XII, 744.

9. Pledge by trustee. Where one known to be a trustee pledges that which is known to be trust property, to secure his own debt, the act is *prima facie* unauthorized, and it is the duty of him who takes such security to ascertain whether the trustee has a right to give it. 1868. *Snaw v. Spencer* (100 Mass. 882), I, 115.

10. — Where one holding certificates of stock in his name, as "trustee," pledges the same as security for his own debt, the term "trustee" is a sufficient notice of a trust, and the pledgee who takes the certificates without inquiry does so at his peril. *Id.*

11. Capital and income. By a will a trust was created, the capital consisting of stock in two corporations. The corporations afterward issued new stock to be taken by the stockholders, and the trustees, under the will, sold the right to subscribe for stock in one company and bought stock with their own money in the other company, and sold it at an advance. *Held*, that the profits belonged to the income and not the capital of the trust. 1870. *Willbank's Appeal* (64 Penn. St. 256), III, 585.

12. — Where the property of a corporation consists wholly of real estate, and a part of it is taken by eminent domain, the compensation therefor, if distributed as a dividend to the shareholders, belongs to the capital and not to the income of a trust fund invested in the shares. 1872. *Heard v. Eldredge* (109 Mass. 258), XII, 687.

13. A director in a company cannot become a contractor with the company nor have any personal or pecuniary interest in such contract. 1871. *Port v. Russell* (36 Ind. 60), X, 5, and *note*, 12.

UNDERWRITERS — *See* INSURANCE.

USURY.

1. Defense of — pleading. Where, by statute, the taking of usury does not avoid the contract, but only forfeits the interest, the defense of usury is not admissible under the plea of non-assumpsit, but must be pleaded specially and proved strictly as averred. 1870. *Frank v. Morris* (57 Ill. 138), XI, 4.

2. Who may maintain defense of. Plaintiff purchased real estate subject to a mortgage and, as part of the consideration, agreed to pay the mortgage debt. *Held*, that plaintiff could not maintain a bill in equity to restrain a sale of the premises by the mortgagee under a power in the mortgage, on the ground that the mortgage debt was usurious. 1872. *Hough v. Horsey* (36 Md. 181), XI, 484.

3. — A borrower who has not agreed to pay usurious interest cannot maintain the defense of usury to an action to recover the money loaned, on the ground that a third person has paid the usury demanded by the lender for making the loan. 1878. *McArthur v. Schenck* (81 Wis. 678), XI, 648.

4. Defense of by surety. The defense of usury being unavailing to a corporation in New York, cannot be invoked by its surety. 1871. *Freese, Adm. v. Brownell* (35 N. J. 285), X, 289.

5. A stipulation in a mortgage for the payment of attorney's fees in case of default and a suit in foreclosure is not usurious. 1870. *Weatherly v. Smith* (30 Iowa, 181), VI, 668.

6. Making debt payable in gold. The maker of a note for a certain sum, payable in currency with legal interest, in order to obtain an extension of time, gave a new note for the amount, payable in gold coin, or in currency with the premium on gold, at a certain date. *Held*, that the second note was usurious. 1871. *Gates v. Hackethal* (57 Ill. 534), XI, 45.

7. Defendant, being charged as indorser upon a promissory note, gave his own note in lieu thereof. The original note was void for usury, but defendant was ignorant of this fact when he gave his note in renewal. *Held*, that defendant could defend for usury against a *bona fide* purchaser of his own note for value. 1870. *The First National Bank v. Plankinton* (27 Wis. 177), IX, 458.

8. The purchase of an accommodation note, at a rate of discount greater than legal interest, if made in good faith, and without knowledge of the character of the paper, is not a usurious transaction, and the defense of usury is not available in an action brought by the purchaser on such note against the maker. 1871. *Dickerman v. Day* (31 Iowa, 444), VII, 158.

9. The courts of one State are not bound to take judicial cognizance of the usury laws of another State; and one who sets up the usurious, and therefore void, nature of a contract made in another State, must also show what are the usury laws of such other State. 1870. *Klinck v. Price* (4 W. Va. 4), VI, 268.

10. The repeal of usury laws takes away the defense of usury in actions thereafter brought on any contract, whether made prior to or after the repeal. 1871. *Woodruff v. Scruggs* (27 Ark. 26), XI, 777.

See BANK AND BANKING; BILLS AND NOTES.

VENDOR AND PURCHASER

I. OF GOODS.

II. OF LANDS.

I. OF GOODS.

1. Action by vendee to recover amount of incumbrances. A vendee of personal property who is compelled, in order to retain the property, to discharge an incumbrance existing, unknown to him, at the time of the purchase, may bring assumpsit for money paid against the vendor within the statutory period of limitation, after discharging the incumbrance. 1870. *Sargent v. Currier* (49 N. H. 810), VI, 524.

2. Mere knowledge by a vendor of latent defects in property, upon which a contract is based, will not constitute a defense to an action by the vendor upon such contract. 1871. *Frenet v. Miller* (87 Ind. 1), X, 62.

3. A vendee of chattels, in case of failure of title to a portion thereof, is not bound to rescind the contract *in toto*, but may retain so much as he has secured a title to, and recover damages for the loss of the residue. It is optional with him to recoup such damages in action against him for the purchase-money, or to bring an action therefor; and such option is not defeated by a transfer of the claim against him, and the bringing of an action in the name of the transferee, except in cases where an indorsee or transferee of negotiable paper acquires a title discharged of all equities, and valid against all defenses. 1878. *McKnight v. Deekin* (53 N. Y. 399), XI, 715.

4. Goods were bought by means of fraud under such circumstances as entitle the vendor to treat the whole transaction as void, and the vendee, upon getting possession, immediately transferred them, by general assignment of all his property, to an assignee. *Held*, that the vendor could maintain replevin against the assignee. 1872. *Farley v. Lincoln* (51 N. H. 577), XII, 182.

II. OF LAND.

5. Where a person occupies real estate under a contract for the purchase of it, and the contract is ultimately carried into effect, the law will not imply a promise on his part to pay rent, and an action for use and occupation cannot be maintained against him in the absence of an express promise to pay rent. 1869. *Dennett v. Penobscot Fair Ground Co.* (57 Me. 425), II, 58.

6. The purchaser of property, with knowledge in fact of a prior unrecorded conveyance, is not a *bona fide* purchaser, without notice. Such knowledge is equivalent to registration. 1869. *Matter of Conrad Leiman* (32 Md. 225), III, 132.

7. In an action for the purchase-money under an agreement for the sale of land by which the plaintiff bound himself to give possession and execute a warranty deed upon the payment of the purchase-money, the declaration alleged that plaintiff had at all times been ready and willing to perform his part of the agreement; but the defendant pleaded that the plaintiff was not seized of the land agreed to be conveyed. *Held*, that under the issue thus raised plaintiff was called upon to prove his title. 1871. *Negley v. Lindsay* (67 Penn. St. 217), V, 427.

8. Fraudulent misrepresentations of a vendor of land as to the price which he paid therefor, are not actionable. 1872. *Holbrook v. Connor* (60 Me. 578), XI, 212, and *note*, 218.

9. The purchaser of lands with covenants for title cannot, in an action on a note given for the purchase-money, prove a breach of the covenants, there being no suggestion of fraud, of eviction or of insolvency. 1870. *Guice v. Sellers* (43 Miss. 52), V, 476.

10. Violation of revenue laws by vendor. In an action upon promissory notes given in part payment for a distillery and fixtures, the defense set up

was that by reason of certain violations of the revenue laws, by the payee of the notes and vendor of the property, prior to the purchase by the defendant, a portion of the property was, after such purchase, seized, condemned and sold by the officers of the United States, whereby the defendant's title failed and the property was lost. On the trial the defendant put in evidence the record of the seizure and condemnation. It did not disclose by whom, or at what time, the penalty which worked a forfeiture and loss of the property was incurred. An offer of the defendant to prove by extrinsic evidence that the illegal acts established by the decree were done by those operating the distillery before the purchase by him, was excluded by the court. *Held*, that such exclusion was error. 1873. *McKnight v. Deelin* (53 N. Y. 899), XI, 715.

11. **Destruction of property after contract of sale.** If the owner of land having buildings thereon contracts to sell and convey it upon the payment of a certain price which the purchaser agrees to pay, and before full payment the house is destroyed by accidental fire so that the vendor cannot perform the agreement on his part, he cannot recover or retain any part of the purchase money. 1871. *Wells v. Calnan* (107 Mass. 514), IX, 65.

12. **A covenant of seisin runs with the land**, and is divisible so that if land be sold in parcels to different purchasers, each may maintain an action on the covenant. 1871. *Schofield v. Homestead Co.* (83 Iowa, 817), VII, 197.

13. **Where a contract is made for the sale of land**, the vendor to give a warranty deed on payment of the purchase-money, and between the time of the contract and the making of the deed, a portion of the land is condemned for a railroad, damages for the taking of the land belong in equity to the purchaser, and he cannot treat such taking as an incumbrance, and recover therefor on the covenants in the deed. 1871. *Stevenson v. Lochr* (57 Ill. 509), XI, 86.

14. **Where minds do not meet.** Where the vendor of lands thinks he is selling one parcel, and the vendee thinks he is purchasing another parcel, their minds do not agree and there is no contract although both parties acted in good faith. 1869. *Kyle v. Kavanagh* (108 Mass. 356), IV, 560.

15. **Crops.** Plaintiff, under a verbal contract of purchase, entered upon defendant's land and sowed crops, with defendant's consent. Afterward defendant refused to complete the sale, and ejected plaintiff. *Held*, that plaintiff was entitled to the crops. 1872. *Harris v. Frink* (49 N. Y. 24), X, 818.

16. **Vendor's lien.** The taking by the vendor of lands of the note of the purchaser, with a third person as surety thereon, is *prima facie* evidence of a waiver of the vendor's lien for the purchase-money, but it may be rebutted by satisfactory proof of an express agreement that the lien should be retained. 1869. *Fonda v. Jones* (42 Miss. 792), II, 669.

17. — **A vendor's lien upon land for its purchase-money is not impaired** because the obligation taken for its payment includes the price of personal property sold at the same time, when the amount to be paid for the land can be ascertained by proof. 1871. *Russell v. McCormick* (45 Ala. 587), VI, 707.

18. — **A vendor's lien is not assignable.** 1871. *Hecht v. Spears* (37 Ark. 229), XI, 784.

19. A sub-vendee taking the legal title to land, charged with a vendor's lien, and with notice, accepts the title *cum onere*, and is in no better position than the original purchaser; and whatever is enough to excite attention or put such sub-vendee on inquiry is notice. 1870. *Parker v. Foy* (43 Miss. 260), V, 484.

20. **Rescission.** A vendor, in consideration of the prompt payment of a sum of money, agreed to sell lands on condition that, in case of the failure of the vendee in the performance of all or either of the covenants on his part, the vendor should have the right to declare the contract void, and take immediate possession of the premises. In the construction of this contract, *held*, that where the vendee enters upon the performance of the contract, and, paying part of the purchase-money, makes default which is inexcusable, and the vendor, being without fault, exercises the right given by the contract of declaring the same terminated, and in doing so acts fairly and within the scope of the power, then no action can be maintained by the vendee to recover back what he has paid; but a vendor who is himself in fault for fraud or violation of his contract cannot exercise the power so given without making restoration of what he has received under it. In such case the law would imply a promise to repay the purchase-money received, and an action for money had and received would lie. 1870. *Wheeler v. Mather* (56 Ill. 241), VIII, 683.

21. — Where a vendor of real estate has, by his own act, or by operation of law, been rendered unable to perform his contract to convey such real estate to the vendee, the vendee may rescind the contract and recover the purchase-money paid, without first tendering to the vendor the purchase-money due, and demanding a deed; and the vendee may exercise this right where a vendor has permitted a mortgage executed by him and existing at the time of the purchase, to be foreclosed, and the land sold thereunder. 1870. *Wilhelm v. Fimple* (31 Iowa, 131), VII, 117.

22. — Where a purchaser goes into possession of premises under contract of sale and the title of the vendor fails, or he is unable to make conveyance as stipulated by the contract, such purchaser cannot retain possession and enjoyment of the premises by virtue of the contract, and at the same time avoid the payment of the purchase-price. 1870. *McIndoe v. Mormon* (26 Wis. 588), VII, 96.

23. — The vendor may maintain an action for a strict foreclosure and forfeiture of the purchaser's rights under the contract, unless the latter offer to rescind; and it is not necessary that the plaintiff should tender a deed conveying a clear title before such action can be brought or maintained. *Ib.*

24. **Measure of damages — breach — contract.** In an action for a breach of a contract to convey lands, the measure of damages, where the vendor acted in bad faith, is the value of the land at the time of the breach; but where the vendor acted in good faith the measure of damage is the consideration money and interest. 1870. *Hammond v. Hannin* (21 Mich. 374), IV, 490.

25. — Parties had a contract for the purchase and sale of real estate; defendant refused to complete the contract by accepting deed and paying the purchase price. *Held*, (1) that the measure of damage to the vendor was the difference between the contract price and the value of the real estate when the

vendee refused to complete; (2) that, after the vendee had refused to complete, the vendor was not obliged to consult him or obtain his consent to a sale of the real estate to another party. 1871. *Griswold v. Sabin* (51 N. H. 167), XII, 76.

See BANKRUPTCY; DAMAGES; EASEMENT; ESTOPPEL; JURY; LIMITATION OF ACTIONS; PAYMENT; REAL PROPERTY; SALE.

VERBAL AGREEMENTS — *See* STATUTE OF FRAUDS.

VERDICT — *See* JURY.

VOLUNTARY AGREEMENT.

1. As a general rule, a court of equity will not enforce a voluntary agreement, or perfect a merely promised or imperfect gift. There is *locus penitentie* as long as it is incomplete. 1865. *Taylor v. Staples* (8 R. I. 170), V, 556.

2. — Where the evidence adduced in support of a bill, for the specific performance of an alleged agreement to convey an estate, is adjudged by the court to show merely an intent on the part of a wealthy father, while in life, to give to his son that estate, which intent the father, from forgetfulness or some other cause, never executed, the bill will be dismissed with costs. *Id.*

3. — A father, possessed of great wealth, makes upon his account book an entry to the credit of a son, in these words: "By further allowance, to pay for house, etc., \$5,000;" and long after the death both of father and son the legal representatives of the son, by suit in equity, seek to recover from the legal representatives of the father the said sum, with interest from the date of said entry (May 30, 1837). *Held*, that the entry is but an indication of an intention on the father's part, and not a promise founded upon a consideration cognizable by a court of equity, — neither the fact that the father had trained up the son in idleness, as the heir presumptive of inexhaustible wealth; nor the fact that this "allowance" was consistent with a "family arrangement," existing at the date of said entry; nor the fact that, unless this claim of \$5,000 and interest were allowed and paid, would this son receive of his father's accumulations so much as was received by his brothers and sisters respectively, constituting a valuable consideration, upon which alone the court must act, unheeding a consideration merely "moral" or "meritorious." *Id.*

See CONTRACT.

VOLUNTARY CONVEYANCE — *See* CONVEYANCE.

WAGER — *See* BETTING AND GAMING.

WAIVER — *See* INSURANCE.

WAR.

I. RIGHTS OF PARTIES TO.

II. EFFECT OF AS TO CONTRACTS.

I. RIGHTS OF PARTIES TO.

1. **Belligerent rights.** In an action of trespass for inducing Confederate soldiers to cut and take plaintiff's timber, etc., it appeared that the plaintiff and defendant owned adjoining farms; that during the war the surrounding country was at times occupied by the Confederate army, which, on one occasion, cut a large amount of valuable timber from plaintiff's farm, and took and used other of his property at the suggestion and by the advice, as was alleged, of the defendant, who sympathized with the Confederate cause. *Held*, that the cutting of the timber and taking of the property being by virtue of belligerent rights, the plaintiff could not recover. *Held*, further, that the belligerent rights of both parties to the war were the same and equal in extent. 1870. *Smith v. Braselton* (1 Heisk. Tenn. 44), II, 678.

2. **Unauthorized appropriation of enemy's private property.** A citizen or corporation in one country or section of country at war with another is responsible for the unauthorized appropriation of an enemy's private property, whether the possession be acquired by a mere trespass or through the form of a purchase under an illegal judgment of a court. 1871. *Louisville & Nashville R. R. Co. v. Buckner* (8 Bush. Ky. 277), VIII, 462.

3. — Land was seized, confiscated and sold under the act of Congress of July 17, 1872, providing for the seizure and confiscation of "the property of rebels." *Held*, that only the life estate was seized and sold, and that a State statute limiting the right of action in such cases would not bar the right of the reversioner to recover possession of such land after the termination of the life estate. 1871. *Dewey v. McLain* (7 Kans. 126), XII, 418.

4. **Right of Confederate government to confiscate property.** An executor during the war received money bequeathed to legatees residing in Indiana, which was afterward confiscated by the Confederate government. *Held*, that the Confederate government had authority as an exercise of belligerent rights to confiscate the property as of an alien enemy, and that act released the executor from his responsibility therefor. 1872. *Newton v. Bushong* (22 Gratt. Va. 628), XII, 558.

5. **Sale at auction by United States marshal — title of purchaser.** A United States provost marshal seized personal property of plaintiff and sold it at public auction. Subsequently plaintiff found a horse, part of the property sold, in the possession of defendant, and brought an action for its recovery. The court ruled that plaintiff must prosecute his remedy, if any, against the government, and that defendant was not liable in this action. *Held*, error, and that in order to protect his title under the sale, the defendant must show that the property was seized and sold in accordance with the usages of war. 1871. *Bowles v. Lewis* (48 Mo. 83), VIII, 85.

6. An action for false imprisonment will lie against a Confederate officer, who imprisons a citizen while acting in his military capacity; and in such an action the plea of belligerent rights is no defense, nor is the officer's liability affected by a pardon granted to him, by the president of the United States, for offenses arising by reason of participation in the rebellion. 1870. *Caperton v. Martin* (4 W. Va. 188), VI, 270.

7. A citizen, assisting Confederate soldiers in the capture of a federal soldier, does not thereby render himself liable to a civil action by the captive. 1871. *Wright v. Winningham* (2 Heisk. Tenn. 254), V, 85.

8. Prosecutions for acts done by military order. A sheriff paid the surplus of a sale on execution to another than the person entitled thereto, by order of the military authorities in Missouri. In an action on the sheriff's bond to recover the amount, *held*, that the section of the State constitution providing that no person should be prosecuted for any act done in pursuance of military authority was void in such a case as impairing the obligation of contracts. 1871. *State v. Gateweiller* (49 Mo. 17), VIII, 119.

9. Enemies in war have no right to enter and use the courts of the adverse party; but it is competent for the legislature to permit them to do so on such terms as it may prescribe. 1870. *Peerce v. Carakadon* (4 W. Va. 284), VI, 281.

10. The orders and decrees of the so-called court of probate sitting in Alabama during the rebellion are to be treated as the orders and decrees of foreign courts; and they may be impeached for fraud, want of jurisdiction, or an illegal exercise of the jurisdiction assumed. 1871. *Moseley v. Tuthill* (45 Ala. 621), VI, 710.

11. The statute of limitations was suspended in Alabama during the period in which the courts were virtually closed by the war. 1870. *Coleman v. Holmes* (44 Ala. 124), IV, 121.

12. — The statute of limitation of actions and suits does not run during civil war where the courts are not open unto suitors. 1870. *Caperton v. Martin* (4 W. Va. 188), VI, 270.

13. — The statute of limitation as enacted by congress (12 Stat. at Large, 757), limiting actions for wrongs done, etc., under military authority to two years, is applicable alike to cases in the federal and State courts. 1871. *State v. Gateweiller* (49 Mo. 17), VIII, 119.

II. EFFECT OF AS TO CONTRACTS.

14. Commercial intercourse between enemies. The act of congress (1861, ch. 8, § 5), concerning commercial intercourse with States in insurrection, and the proclamations of the president thereunder, do not extend to agreements made in those States, between persons being there, for the leasing of real estate therein, the payment of rent there, out of the products of the land, or the delivery of and payment for personal property already upon the demised premises, to be used thereon. 1868. *Kershaw v. Kelsey* (100 Mass. 561), I, 142.

15. — The subsequent unlawful forwarding of cotton raised on the land by the defendant's son does not affect the validity of the agreements contained in the lease. *Ib.*

16. — A contract was made, the consideration of which arose from the following transaction: H., of Kentucky, drew and delivered to C., of the same State, an order addressed to E., of Texas, requesting him to pay money in his hands to T., also of Texas. The order was transmitted through the lines, and executed. *Held*, that this transaction was not a violation of the proclamation of the president of the United States, of August 16, 1861, prohibiting all commercial intercourse between the loyal and rebellious States, Kentucky being loyal and Texas disloyal, and that the contract supported by this transaction was valid. 1869. *Haggard v. Conkwright* (7 Bush. Ky. 16), III, 297.

17. — Action on a promissory note. Plea that when the note was made, plaintiff was a citizen of Minnesota, and defendant a citizen of Arkansas, aiding the rebellion and public enemies of the United States. *Held*, that the plea was good. 1871. *Rice v. Shook* (27 Ark. 187), XI, 788.

18. — The defendants at the breaking out of the rebellion of 1861 were copartners doing business at Savannah, Ga., where one of them, named Wheaton, resided. Two of the defendants did business as copartners in New York, where they resided. On the 23d of August, 1861, the plaintiff's agent purchased of the Savannah firm a bill of exchange. It was drawn by Wheaton in the name of his firm on the New York firm of defendants. By an act of congress passed July 13, 1861, the president was authorized to declare certain districts in insurrection, and that thereupon all commercial intercourse should cease and become unlawful. On the 16th of August, 1861, the president by proclamation declared the district in which Savannah is situated in a state of insurrection. *Held*, that the drawing of the bill of exchange was illegal and void, and within the rule prohibiting contracts with the enemy during war, and no action could lie against any of the parties to it. 1870. *Woods v. Wilder* (43 N. Y. 164), III, 684.

19. **Partnership.** The copartnership between Wheaton and the other defendants was dissolved by the war and the defendants were not bound by the contract of Wheaton made after such dissolution. *Ib.*

20. **A deed of lands in Iowa**, executed in 1863, by a citizen of Virginia to a citizen of Ohio, is void. 1870. *Hill v. Baker* (32 Iowa, 802), VII, 198, and *note*, 196.

21. **Note given for slaves.** The defendant, in an action on a promissory note, alleged that the note was given for slaves taken by the plaintiff from Missouri to Arkansas, after the proclamation declaring that State in insurrection. *Held*, that the transaction was in violation of law, and that the note could not therefore be collected. 1870. *Carson v. Hunter* (46 Mo. 467), II, 529.

22. **Knowledge by the seller of a horse that he was purchased for use in the Confederate service**, *held*, not to vitiate a note given for the purchase price. 1870. *Tedder v. Odom* (2 Heisk. Tenn. 68), V, 25.

23. **Order on Confederate government.** Where an agent of the war department of the Confederate government issued the following instrument: "Confederate States Depository, Willmington, pay Messrs. Coole & Co., or order, twenty thousand dollars," which was indorsed by the payees to the defendant,

who indorsed it to another person, by whom it was indorsed to the plaintiff, it was *held* (RODMAN, J., dissenting), that the instrument was illegal; that such illegality was apparent upon its face, and extended to all the indorsements. 1872. *Cronly v. Hall* (67 N. C. 9), XII, 597.

24. Interest continues to run in time of civil war on debts due from a citizen of one belligerent to a citizen of the other. 1870. *Spencer v. Brower* (82 Tex. 668), V, 254; but see *note*, 255.

25. — On the 14th of August, 1860, the plaintiff loaned the defendant, a citizen of Minnesota, the sum of \$17,000, upon a bond and mortgage on lands in that State, conditioned for the payment of the principal in five years, with interest, payable semi-annually. The plaintiff was at the time a resident of North Carolina, and so continued to the date of the action, and not there nor elsewhere engaged in the service of the United States, but during the whole period he had an agent in the State of Minnesota. In an action brought to foreclose the mortgage, *held*, that the plaintiff was entitled to recover the interest accruing on the bond during the rebellion and before maturity. 1870. *Lash v. Lambert* (15 Minn. 416), II, 143.

26. Relation of attorney and client terminated by the war. Where a citizen and resident of New York had a suit pending in North Carolina previous to the late war, and during the war his debtor there pays up his indebtedness to the attorney or agent of such non-resident. *Held*, that such action was void, and that the relation of attorney and client was terminated by the war. 1871. *Blackwell v. Willard* (85 N. C. 555), VI, 749.

27. Any securities held by a citizen and resident of New York previous to the late war, upon persons resident in North Carolina, could not be extinguished *durante bello*, either through the agency of the courts there, or through the former agents and attorneys of such non-resident. *Ib.*

28. — Therefore, where a debtor to a citizen or resident of New York paid off said claim to a clerk and master in such State in Confederate currency, before such currency had depreciated to any extent, such payment is a nullity. *Ib.*

29. Effect of the war of the rebellion on life insurance. *See* INSURANCE.

See LIMITATION OF ACTIONS.

WAREHOUSEMEN.

1. Warehousemen are responsible for due care in storing the goods intrusted to them in a place of reasonable safety, and are to be charged only upon proof of their own negligence, or that of their servants in the course of their employment. 1868. *Aldrich v. Boston and Worcester Railroad Co.* (100 Mass. 31), I, 76.

2. — Where servants of warehousemen are present during the destruction of the warehouse by fire in the night-time, their negligence to remove goods from the warehouse is not such negligence as will charge the warehousemen unless it be shown that such was a part of the service for which the servants were engaged. *Ib.*

3. **The indorsement and delivery of a warehouse receipt of goods stored transfers the ownership of the property only, and not the contract itself.** 1873. *Hale v. Milwaukee Dock Company* (29 Wis. 482), LX, 608.

4. **Not estopped by receipt.** In an action by the assignee, for the value of a warehouse receipt, to recover the property described therein, *held*, that the obligation of the warehouseman, in the absence of fraud or neglect on his part, was discharged by delivering the property actually received in store, although it did not answer the description of the receipt. *Ib.*

5. **Warehouse receipt is not a negotiable instrument.** A warehouseman, on application by the owner, issued by mistake, and at different dates, two warehouse receipts for the same goods, the first of which the owner assigned, for value, to F., and the other to the plaintiff. Afterward the warehouseman delivered the goods to the plaintiff on the second receipt. Whereupon F. recovered the goods of plaintiff by replevin. On suit by plaintiff to recover of the warehouseman the value of the goods, *held*, that a warehouse receipt was not, technically, a negotiable instrument; that the assignee thereof occupied no better position than the assignor, and that, therefore, the plaintiff could not recover. 1869. *Second National Bank v. Walbridge* (19 Ohio St. 419), II, 408

6. **Wrong delivery by warehouseman.** A warehouseman having in his possession goods of A, and also of B, delivered, by mistake, to C, the goods of B, on an order from A, of whom C had purchased goods to fill an order from D. The goods were received from C, by D, and appropriated to his own use by him, without notice or knowledge of the mistake, and in good faith. *Held*, that D was not liable to the warehouseman, either in *assumpsit*, because there was no privity of contract, or in tort, for their conversion, because the warehouseman's own act contributed to the misappropriation. 1870. *Hills v. Snell* (104 Mass 173), VI, 216.

7. **Burden of proof.** Defendants had in their possession, as warehousemen, goods of plaintiff, a part of which they failed to deliver to him. In an action of *assumpsit* for non-delivery, *held*, that the burden of proof was on defendants to show either a delivery or that they had used ordinary care in keeping the goods. 1870. *Boies v. The Hartford and New Haven Railroad Company* (37 Conn. 272), IX, 347.

8. **Private bonded warehouse.** The provision in the act of congress of March 28, 1854, that goods deposited in a private bonded warehouse, shall be at the exclusive risk of the owner or importer, was for the exclusive benefit of the U. S. government, and does not relieve a warehouse keeper from the duty of exercising ordinary care and prudence in protecting goods committed to his keeping, nor from the obligations of other warehousemen to their patrons. 1872. *Schuerin v. McKie* (51 N. Y. 180), X, 581.

9. — Where goods have been deposited with bonded warehousemen, upon which the duties have been paid, their failure to deliver them when demanded casts upon them the *onus* of accounting for the same. And, in an action against them for refusing to deliver the goods, interest upon their value is a proper item of damages. *Ib.*

10. — In such an action, the defendants gave evidence tending to show that their warehouse was broken open and the goods removed by burglars, although the defendants had used reasonable precautions to protect their warehouse from burglars. The court charged the jury, in substance, that, to make this defense available, the evidence must be such that from it they could fairly assume that the goods were lost by means of the burglary. *Held*, this charge was not erroneous. *Id.*

11. Duty of warehouseman where title of goods is disputed. Plaintiff sent his goods, in charge of G., to defendant's warehouse, for storage. G. put his name on the goods, and left a written notice with defendant not to give them up without his consent. Plaintiff then sent a written notice to defendant saying: "Please hold the same, subject only to my written order. The property is mine." Soon after, plaintiff demanded the goods of defendant, who refused to deliver them up, even after plaintiff had offered him a bond of indemnity, and to pay all charges. Subsequently a sheriff levied on the goods, under two executions against G., and, on the following day, an execution against plaintiff came into the sheriff's hands. The goods were sold on one of the executions against G., and the proceeds applied in payment thereof. *Held*, that defendant was liable for the value of the goods on the ground that he ought to have given up the goods on demand and offer of indemnity by plaintiff, or commenced a suit by bill of interpleader to determine the respective rights of plaintiff and G.; and that, as the goods were in fact plaintiff's, the levy and sale of them under an execution against G. did not mitigate the damages, notwithstanding the fact that the sheriff also held an execution against plaintiff, under which he did nothing. 1871. *Ball v. Liney* (48 N. Y. 6, VIII, 511.

WARRANTY.

- I. OF TITLE — *See* COVENANT.
- II. ON SALE OF GOODS — *See* SALE.
- III. IN INSURANCE — *See* INSURANCE.

WEAPONS — *See* CONCEALED WEAPONS.

WATER AND WATER-COURSE.

1. The defendants, in pursuance of authority granted them by the legislature, built a dam which backed the water upon the ancient mill of plaintiff. *Held*, that defendants were liable for the injury occasioned. 1869. *Lee v. Pembroke Iron Company* (57 Me. 481), II, 59.

2. — A legislative authority to do an act which will naturally result in damages to private property must be coupled with provisions for ascertaining and paying such damages in order to protect persons acting under such authority from liability at common law. *Id.*

3. A dam was constructed on a stream in a manner in no wise injurious or prejudicial, at the time of its erection, to a mill-owner above; but, by reason of the unusual and unprecedented inflow of waters from the working of mines located on the stream above the mill, the obstruction became so great as to

prevent the regular and efficient operation of the mill. *Held*, that the owner of the dam was not responsible for the injury thus occasioned, and that an injunction would not lie compelling him to lower the dam. 1870. *Proctor v. Jennings* (6 Nev. 83), III, 240.

4. One who builds a dam across a stream, is bound so to construct it that it will resist not only ordinary freshets, but also such extraordinary floods as may be reasonably anticipated. 1871. *Gray v. Harris* (107 Mass. 492), IX, 61.

5. The owners of land, on opposite sides of a stream, agreed by covenant, running with the land, jointly to erect a dam, each to have the use of half of the water. The title to the land passed by various intermediate conveyances to plaintiff on one side of the stream, and defendant on the other. *Held*, that an action on the case would lie by plaintiff against defendant for using more than half of the water. In such a case, nothing less than an absolute denial of the right to one-half the water, followed by an enjoyment inconsistent with its existence for a period of twenty-one years or more, can amount to an extinguishment of it. 1871. *Lindeman v. Lindsey* (69 Penn. St. 93), VIII, 219.

6. Parol license to back water. Plaintiff's ancestor gave to persons through whom defendants derive title, a license by parol, to back water upon his land by damming a stream for a mill power. Under this license the defendants and their predecessors built the dam and a mill by the dam site, at an expense of \$15,000, for the purpose of enjoying the easement. Plaintiff brought suit at law for the trespass. *Held*, (1) that the easement was permanent in its nature, and the license should have been in writing, under the statute of frauds; (2) that investments of magnitude having been made by defendants and their predecessors, under such license they were in equity entitled to a grant as of specific performance; (3) that such an equitable defense might be sustained to defeat the plaintiff's action at law. 1872. *Cook v. Pridgen* (45 Ga. 331), XII, 582.

7. Detention of water. The owner of a mill, whose dam and machinery are suited to the size and capacity of the stream, has a right to the reasonable use of the water to propel his machinery, but he must detain it no longer than is necessary for its profitable enjoyment, and he must return it to its natural channel before it passes upon the land of the proprietor below. 1870. *Paul v. Lewis* (41 Ga. 162), V, 526.

8. — What is a reasonable detention is a question for the jury, in view of all the facts in the case, taking into account the nature and use of the machinery, and the use of the water necessary to its profitable employment. If the owner detains the water no longer than is necessary for its profitable use, he is not liable in damages to the proprietor below. *Id.*

9. A mill owner has the right, in a reasonable manner, to discharge the waste from his mill, such as sawdust, shavings, etc., into the stream, in the ordinary course of using such mill; but he has not the right, wantonly and needlessly and out of the ordinary course in such cases, and not in the service of his substantial interest and benefit in the use of his mill in a reasonable manner, to throw such waste, or permit it to go into the stream, to the injury of inferior heritors. 1869. *Jacobs v. Allard* (42 Vt. 303), I, 331.

10. **Detention of water — right of inferior owner.** Plaintiff was the owner of a reservoir dam erected across a stream running through his land for the purpose of accumulating surplus water for the use, in dry seasons, of his factory, situate several miles below. Defendant, the owner of land situate on the stream between the dam and the factory, opened the gates and allowed the surplus water to escape. *Held*, that an injunction would not lie restraining defendant from so doing, although the detention of the water worked no material injury to him. 1871. *Clinton v. Myers* (46 N. Y. 511), VII, 373.

11. **Diversion of water-course.** The defendant, owning land on one side of a river, built a break-water to prevent the water encroaching upon his land, which had the effect to throw the current over upon and wash away the plaintiff's lands opposite. *Held*, that the defendant was liable. 1868. *Gerrish v. Clough* (48 N. H. 9), II, 165.

12. — A stream of water flowed in a well-defined channel across a highway and through defendant's land, until a great freshet came when it left the old channel and made a new one down the highway and flowed over plaintiff's land. Plaintiff then turned the water back to its old channel in defendant's land. Subsequently the highway surveyor, without authority, closed up the old channel and thereby caused the water to flow upon defendant's land in various places, whereupon defendant used such means to relieve his land as to cause the water to flow again in the channel formerly made by the freshet and upon plaintiff's land. *Held*, that this was an invasion of plaintiff's rights, for which he could maintain an action without waiting for damaging effects from the water. 1871. *Tuthill v. Scott* (43 Vt. 525), V, 301.

13. **In an action for the diversion of a water-course** it appeared that, at a point on defendant's land, about five rods from plaintiff's land, the water ceased to flow between defined banks but spread out over the surface of the ground and so ran to and across plaintiff's land and then began to flow again in a defined channel. *Held*, that the stream did not cease to be a natural water-course, and that plaintiff could maintain the action. 1871. *Macomber v. Godfrey* (108 Mass. 219), XI, 349.

14. **Grant of water privilege.** The conveyance of a house and land by an ordinary warranty deed carries with it, by implication, the right which the grantor has to water running to the premises conveyed by an aqueduct from a distant spring; and a cotemporaneous special deed, to the grantee, of the water privilege, containing limitations and restrictions in the use thereof without the words "to his heirs, assigns, etc.," will not be construed to modify the estate in the water and aqueduct so as to prevent it passing by deed of the premises from such grantee to succeeding grantees, and the latter may recover damages from the original grantor for cutting off the aqueduct on adjacent land, owned by him, and thus disturbing the water privilege. 1870. *Coolidge v. Hager* (43 Vt. 9), V, 256.

15. **Injury from water artificially collected.** Defendants built a reservoir on land sold to them by the plaintiff for that purpose. Water from the reservoir percolated through the soil and injured plaintiff's adjacent lands. *Held*,

that defendants were liable for the damages. 1871. *Wilson v. City of New Bedford* (108 Mass. 261), XI, 352.

16. **Obstructing flow from adjacent higher land.** A land owner may, in the reasonable use of his own land, lawfully prevent the flow of surface water on to his premises from the adjacent higher land of another, although such adjacent land is thereby injured; and the fact that such water has been wont to flow upon the inferior land for over twenty years will not amount to a prescription. 1870. *Sweet v. Cutts* (50 N. H. 439), IX, 276, and *note*, 284.

17. **The erection of an embankment on one's own land, whereby the surface water accumulating on the land of another, is prevented from flowing off in its natural courses, and caused to flow in a different direction over his land, is an act for which an action may be maintained by the latter, without showing any actual injury or damage.** 1871. *Tootle v. Clifton* (23 Ohio St. 247), X, 732.

18. **Waters percolating in the soil belong to the owner of the freehold, and he may use them as he chooses, free from any usufructuary rights in others.** 1871. *Hanson v. McCus* (42 Cal. 803), X, 299; *Wilson v. City of New Bedford* (108 Mass. 261), XI, 352.

19. — Defendant was the owner of a spring supplied by percolation only, and having no natural channel or outlet. There was an artificial channel which had for fifteen years conducted the water to plaintiff's land below. In an action to restrain defendant from digging on his own land so as to divert the sources of the spring, *held*, that plaintiff had no such interest in the spring as would support the action, and that the user would not support the presumption of a grant of an easement. *Hanson v. McCus, supra*.

20. — A land owner dug a well for the use of his family and stock, thereby preventing the water from reaching, by percolation or underground currents, the spring or open running stream of an adjoining owner. *Held*, that this was not actionable. 1871. *Village of Delhi v. Youmans* (45 N. Y. 363), VI, 100.

21. **A municipal corporation will be restrained from draining the surface water from its lands upon the lands of an adjacent owner.** 1870. *Pettigrew v. Village of Evansville* (25 Wis. 223), III, 50.

22. — Municipal corporations cannot so adjust the grade of its streets as to turn surface water upon the lots of adjacent owners; nor can it lawfully permit property owners on a street to fill up a portion of the street in front of their lots in such a manner as to turn the surface water upon the property of others. 1870. *City of Aurora v. Reed* (57 Ill. 29), XI, 1.

23. — A municipal corporation, by raising the grade of a street, obstructed the flow of surface water from adjacent higher land, to the injury thereof. *Held*, that the owner of the land could not maintain an action for damages. 1871. *Hoyt v. The City of Hudson* (27 Wis. 656), IX, 478.

24. **Fishways in dams.** While the State has the power to require fishways to be made in dams, it cannot impose the expense of making such ways in dams already constructed as that would be a taking of private property for

public use without just compensation. 1870. *Commonwealth v. Pennsylvania Canal Co.* (66 Penn. 41), V, 329.

25. A stream capable of being commonly and generally useful for floating boats, rafts or logs for any useful purpose is subject to the public use as a passage-way. 1869. *Weise v. Smith* (3 Or. 445), VIII, 621.

26. Right of public to use banks. Defendant, in using a stream for floating logs, attached a boom to plaintiff's land. In an action for damages, the judge instructed the jury that, if the stream was adapted to floating logs, and a boom was necessary for that purpose, the plaintiff's right was subrogated to a reasonable use by the public. *Held* correct. *Id.*

27. Floating logs. In the absence of prescription or user, it is not a public right to float logs down a non-navigable stream which is only fit for that purpose during periodical freshets; the bed and banks of such a stream are under the absolute ownership and control of the riparian owner. 1870. *Hubbard v. Bell* (54 Ill. 110), V, 98, and *note*, 108.

28. Railroad along bank of navigable river. A railroad company, in pursuance of alleged franchises embraced in their charter, constructed their track along the bank of a navigable river, below high-water mark, thus cutting off, without compensation, the riparian owners from the benefits incident to their property from its contiguity to the water. *Held*, that the title of owners of lands bordering on tide waters ends at high-water mark; that below the ordinary high-water mark the title to the soil is in the State; and that the riparian owner has no rights beyond high-water mark, as against the State or its grantees. 1869. *Stevens v. Patterson and Newark R. R. Co.* (34 N. J. 532), III, 269.

29. — The question whether the legislature intended to grant the right of building a railroad on soil situated below high-water mark will be determined by an inspection of the charter. A specific grant is necessary to convey such right. *Id.*

30. — A riparian owner cannot recover damages for being deprived of access to a navigable river by reason of the building of a railroad along its banks below high-water mark. 1871. *Tomlin v. The Dubuque, Bellevue & Mississippi R. R. Co.* (83 Iowa, 106), VII, 176, and *note*, 179.

31. Where a new shore is formed on a river not navigable, by the alluvial deposits taken from the opposite side by the wearing away of the stream, the land on the new shore is to be divided between the owners entitled to it, according to the following rule: "Give to each owner a share of the new shore line in proportion to what he held in the old shore line and complete the division of the land by running a line from the bound between the parties on the old shore to the point thus ascertained on the new. 1871. *Bachelder v. Keniston* (51 N. H. 496), XII, 143.

32. The owner of land bounded on a lake, whether navigable or not, has title to the land left dry by the gradual and imperceptible receding of the waters. 1867. *Warren v. Chambers* (25 Ark. 120), IV, 23.

33. Bridge over navigable river. A State legislature may authorize the construction of bridges over the navigable rivers of the State, provided they

do not materially injure navigation 1869. *Chicago v. McGinn* (51 Ill. 266), II, 295. See CONSTITUTIONAL LAW.

34. — The common council of Chicago, in pursuance of a power granted in their charter, passed an ordinance to the effect that the draws of the bridges over the Chicago river should be closed every ten minutes, if necessary for the passage of persons or teams, and that any person in charge of a vessel navigating the river who should attempt to pass any bridge, or approach so near as to occasion damage thereto, while the draw was so closed, should be subject to a penalty prescribed. *Held*, that the legislature had power to authorize the common council to regulate the passage of vessels through the bridges, and that the ordinance in question was a reasonable exercise of that authority, and therefore valid. *Ib*.

35. Tide-water — navigable stream. Information to restrain the defendant from rebuilding a dam across a river alleged to be within tide-water. The water, at the place, rose and fell two feet with the flow and ebb of the tide, the fluctuation being caused by the meeting of the sea water with the river water. The river was only navigated with pleasure boats. *Held*, (1) that defendant's dam was within tide-water, and (2) that the river was navigable water. 1871. *Attorney-General v. Woods* (108 Mass. 436), XI, 380.

See FISHWAY.

WAY — See HIGHWAY.

WHARFAGE.

A State statute giving a remedy for claims for wharfage by proceedings *in rem*, is void. 1871. *Brookman v. Hammill* (48 N. Y. 554), III, 781.

See CARRIERS.

WIFE — See HUSBAND AND WIFE.

WILL.

1. Testamentary capacity. Partial unsoundness of mind not affecting the general faculties, and not operating on the mind of a testator, in regard to testamentary disposition, is not sufficient to render a person incapable of disposing of his property by will. 1871. *Pidcock v. Potter* (68 Penn. St. 343), VIII, 181, and *note*, 184.

2. Insane delusion avoids will. A will which is the direct offspring of even partial insanity is void. 1871. *Cotton et al. v. Ulmer* (45 Ala. 378), VI, 703.

3. — In the contest of a will the judge charged, that "unless the jury believed from the evidence that the testator, if of sound mind, would have included C. or his children in the benefit of his will, they cannot set the will aside because he may have excluded them under an insane delusion as to C." *Held* error, on the ground that when a will is ascertained to be the result of an insane delusion it should be declared void, without inquiring what the testator would or would not have done if he had been of sound mind. *Ib*.

4. An instrument in the form of a deed, which conveys all the property that the maker "may die possessed of," is a will, and is only admissible in evidence after due probate. 1870. *Brewer v. Baxter* (41 Ga. 212), V, 530.

5. A writing, executed by two persons, purporting to be a will, whereby in consideration of mutual friendship, they mutually promise that, in the event of the death of either, the survivor shall pay the expenses of sickness and burial, and shall enter into the possession of the estate of the other, is not a compact, but a will, revocable by either, and is rendered inoperative by a subsequent separate will of either. 1870. *Schumaker v. Schmidt* (44 Ala. 454), IV, 135.

6. A husband and wife each had a will drawn in favor of the other. After the husband's death it was found that each, by mistake, had signed the will of the other, to remedy which error the legislature passed a special act, authorizing the court to reform the will in case the mistake was proved. *Held*, that there was, in law, no will; that, at the death of the husband, his estate vested in his heirs; and that the subsequent legislation was invalid, the effect of it being to divest estates. 1871. *Alter's Appeal* (67 Penn. St. 341), V, 433.

7. A and B mutually agreed by parol to make wills of their real and personal estate, each in favor of the other, and the wills were so made; but B afterward made another will in favor of other parties, and died. *Held*, that the agreement was a contract for the sale of lands within the statute of frauds and was void. 1869. *Gould v. Mansfield* (103 Mass. 406), IV, 573.

8. Where a second will is found to be invalid, with the exception of the clause of revocation, on the ground of undue influence, the clause of revocation alone is not sufficient evidence of the testator's intention to revoke a former will. The presumption is that, if the second will is found to be invalid, the testator intended that the first will should stand, rather than that he should die intestate. 1871. *Rudy v. Ulrich* (69 Penn. St. 177), VIII, 238.

9. The burden is on the proponent of a will, not only to prove the due execution thereof, but also the testamentary capacity of the testator. 1870. *Williams v. Robinson* (42 Vt. 658), I, 359.

10. A wife is not a competent witness to a will containing a devise to her husband. 1871. *Sullivan v. Sullivan* (106 Mass. 474), VIII, 356.

11. — By statute it was provided that "all beneficial devises made in any will to a subscribing witness thereto shall be wholly void, unless there are three other competent witnesses to the same." A wife was one of the three subscribing witnesses to a will containing a devise to her husband. It was contended that the devise to her husband was a 'beneficial devise' to the wife, and, therefore, void, leaving her a competent attesting witness to the rest of the will. *Held*, that the contention could not be maintained, and there not being the required number of competent witnesses required by law, the will was invalid *Id.*

12. Undue influence. Where a person standing in a relation of confidence to a testator who was old and in *extremis*, prepared a will in his own favor, and procured a kinsman of his to witness the same, and caused the relatives and friends of the testator to leave the room while the will was read and executed,

held, that the jury had a right to infer, from these facts and circumstances, fraud or undue influence, and that the *onus* was on the party propounding the paper to prove that it expressed the true will of the testator. 1870. *Harvey v. Sullens* (46 Mo. 147), II, 491.

13. — The unlawful cohabitation of a testator with the mother of an illegitimate child, a legatee in the will, is not of itself sufficient evidence to justify a jury in finding undue influence on the part of the mother. 1871. *Rudy v. Ulrich* (69 Penn. St. 177), VIII, 238.

14. **Conditions.** A condition in a will excluding from a share in the estate any heir of testator who "goes to law to break his will" is valid, both as to real and personal property. 1869. *Bradford v. Bradford* (19 Ohio St. 546), II, 419.

15. — Upon a breach of such a condition the legacy forfeited will pass to the general residuary legatee. *Ib.*

16. **The heir is always to be favored at law, and not to be excluded on mere conjecture.** On the contrary, there must be satisfactory evidence of an intention to give a beneficiary interest to the devisee. 1869. *Saylor v. Plaine* (31 Md. 158), I, 34.

17. **Words of survivorship in a will should be referred to the period for the payment or distribution of the subject-matter of the gift.** 1869. *Sinton v. Boyd* (19 Ohio St. 80), II, 369.

18. — A testator gave all his estate to his wife for life, with a direction that after her death it should be equally divided among his children or the *survivors of them*. One of the children died after the testator's death, but before that of the widow, leaving a child. *Held*, that no interest vested in the deceased child under the will, nor in the grandchild, she being neither one of the "children" nor "survivors." *Ib.*

19. — Where a gift is to take effect in possession immediately upon the death of the testator, words of survivorship refer to that time. 1869. *Branson v. Hill* (31 Md. 181), I, 40.

20. — Where the gift is not immediate, there being a prior life carried out, but words of perpetuity qualify those of survivorship, the survivor will not take the whole gift to the exclusion of the heirs or representatives of his co-legatee. *Ib.*

21. **Power of executors to sell land.** Where no express power is given to executors to sell lands, a power will not be implied from the mere charge of debts upon the lands. 1878. *Will of Fox* (52 N. Y. 530), XI, 751.

22. **Sale of lands to pay testator's debts.** Where, by statute, a sale of the lands of a testator for the payment of debts is authorized: "1. When the will gives no power to sell the same for that purpose, and the personal estate is insufficient therefor;" and "2. When a sale of the lands is more beneficial than a sale of slaves, and is not in conflict with the provisions of the will," and the second ground for sale is relied upon, the jurisdiction of the court to order a sale is limited to a case in which there are no conflicting provisions in the will. 1871. *Moseely v. Tuthill* (45 Ala. 631), VI, 710.

23. "Dying without issue." A will contained a provision by which certain leasehold property was devised to S., and in the event of her death, "without leaving lawful issue or descendants," to W. *Held*, that the limitation over to W. was not void for remoteness; and that the words "dying without issue," in devises of estates less than freehold, signify "a dying without issue living at the death of the first taker." 1870. *Allender's Lessee v. Susan* (83 Md. 11), III, 171.

24. Merger — vested remainder — infant in ventre sa mere — warranty. A testatrix devised real estate to her daughter and sole heir S. for life; but "if the said S. shall have a child to cry," then to said child; and if said child should die, then over. S. and her husband conveyed the estate with warranty to P., and four months after S. had a child W. born alive. W. recovered judgment in an action of ejectment against the grantee of P. In an action by the grantee of P. against P. on the covenant of warranty, *held*, (1) that the life estate of S. under the will was not merged by the descent of the fee; (2) that the remainder in fee was vested in W., he being in *ventre sa mere* at the time of the conveyance from S.; (3) that W. was not barred by the warranty of his parents. 1872. *Oriefield v. Storr* (86 Md. 129), XI, 480.

25. Devise to the United States. Under a statute providing that lands may be devised "to every person capable by law of holding real estate, but no devise to a corporation shall be valid unless such corporation be expressly authorized by its charter or by statute to take by devise," *held*, that a devise to the government of the United States was void. 1878. *Will of Fox* (52 N.Y. 580), XI, 751.

26. Specific devise. A testator, after devising all his real estate to his widow for life, devised a specific parcel thereof to B and the "balance" thereof to C. *Held*, that the devise to C was specific and not residuary, and that C was entitled to contribution from the other devisee for a portion of the land devised to him taken to pay debts of the testator and the dower of the widow, who elected not to take under the will. 1872. *Henderson v. Green* (84 Iowa, 487), XI, 149.

27. Bequest to trustee. A will contained bequests to certain legatees, after which this clause followed: "I hereby appoint N. trustee, to take and keep the above legacies, the income of which he shall appropriate to their comfort so long as they live. After their decease, what remains I bequeath to the above trustee." *Held*, that the remainder to N. was conditional on his accepting the trust. 1870. *Kirkland v. Narramore* (105 Mass. 81), VII, 497.

28. Devise — estate for life with alternative limitation over. A testator gave to his wife and daughter, or in case of the death of one of them, to the survivor, all his real estate during their lives, and in case of the death of the daughter, leaving lawful issue, his real estate was to descend to such lawful issue, their heirs and assigns forever. The will further proceeded: "In case my daughter shall die before her mother, leaving lawful issue, such issue shall enjoy and inherit their mother's right from the time of her death: but in case my daughter shall die, not leaving lawful issue, the executors shall sell, after the death of my wife, the real estate, and distribute the proceeds among my

relatives hereinafter named." *Held*, that the daughter did not take a "estate tail" which could be barred by conveyance in fee; but that she took an estate for life, with remainder to her children in fee, with an alternative limitation over, in the event of her dying without issue living at her death. 1870. *Taylor v. Taylor* (63 Penn. St. 481), III, 565.

29. When bequest void for vagueness — execution *cy pres*. The residuary clause in a will was as follows: "Item. I give and bequeath the residue of my estate, after the foregoing bequests have been fully paid, to the orthodox protestant clergymen of Delphi, and their successors, to be expended in the education of colored children, both male and female, in such way and manner as they may deem best, of which a majority of them shall determine." In a suit by the heirs at law against the executors, to recover the residuary estate: *Held*, (1) that the residuary clause was void for vagueness and uncertainty in the designation of the trustees and of the beneficiaries of the use; and (2) that a court of equity had not the power to decree its execution *cy pres*. 1871. *Grimes' Executors v. Harmon* (35 Ind. 198), IX, 690.

30. Devise to corporation thereafter to be created — "Infidel society." By a will certain property was devised to C. and J. for life, and after their death to the "Infidel Society in Philadelphia hereafter to be incorporated, and to be held and disposed of by them for the purpose of building a hall for free discussion of religion, politics," etc. *Held*, (1) that this remainder, limited to a corporation thereafter to be created, was void, because there was no devisee competent to take at the time, and the possibility that there might be such a corporation during the particular estate for life was too remote; (2) that it was not valid as a charitable use which could be enforced and administered in a court of equity. *It seems* that such a corporation could not be formed under the law of Pennsylvania providing for the incorporation of societies for literary, charitable or religious purposes, and beneficial associations. 1870. *Zeisweiss v. James* (63 Penn. St. 465), III, 558.

31. Bequest limited to use of corporation to be created. The testator, by a clause in his will, gave the residue of his personal estate to certain trustees named, and directed that it should be applied to support a hospital which was to be under such trustees' management. He also directed the trustees to apply to the legislature for an act to incorporate the hospital, and if the legislature should not, within two years after his death (provided the youngest trustee living at testator's decease, and testator's nephew, who was also named in the will, or either should so long live), grant a proper act of incorporation, the bequest was to be paid to the United States. *Held*, that the reasonable interpretation of the will is that the testator intended to limit a contingent future interest in the nature of an executory devise, the contingency depending upon the creation of a corporation by the legislature taking within the period allowed for the suspension of the ownership of property by the statute against perpetuities. 1870. *Burrill v. Boardman* (43 N. Y. 254), III, 694.

32. — An executory bequest limited to the use of a corporation to be created within the period allowed for the vesting of future estates and interests is valid. *Id.*

33. — Such a bequest does not violate the statute of wills which prohibits devises to a corporation not expressly authorized to take by will. *Id.*

34. **Similarity in names.** A testator bequeathed \$20,000 to the "Society for the relief of Indigent Aged Females." The plaintiff, "St. Luke's Home for Indigent Christian Females," and the defendant, "An Association for the Relief of Respectable Aged Indigent Females in the city of New York," each claimed to be the legatee intended. *Held*, that the defendant's name answering more closely to that in the will it was entitled to the bequest. 1878. *St. Luke's Home v. An Association, etc.* (53 N. Y. 191), XI, 697.

35. **Ademption — parol evidence.** A husband died leaving an unsatisfied ante nuptial contract in favor of his wife, and a will declaring it to be his wish that his executors should "see that his contracts are fulfilled, and that his wife have a dowry" of a specified amount. The wife filed a bill in chancery to recover upon the marriage contract; also a petition in the probate court to recover the legacy. *Held*, (1) that the court of chancery had jurisdiction to enjoin her from the further prosecution of the suit in the probate court; and (2) that parol evidence of the situation of the testator, the condition, character, etc., of his property, was admissible to ascertain his intention to adeem, the will not being explicit on this point, and, if such intention should be established, to ascertain whether the legacy should be taken as a satisfaction in full or *pro tanto*. 1870. *Gilliam v. Chancellor & Murray* (43 Miss. 487), V, 498.

See EVIDENCE; EXECUTOR AND ADMINISTRATOR; LIMITATION OF ACTIONS; TRUST

WITNESS.

1. Where the character of a witness for truth and veracity has been impeached, a person well acquainted with the witness in the community in which he lives, but who has never heard the character of the witness as to veracity, called in question or spoken of, is, nevertheless, competent to testify in favor of the witness. 1870. *Lemons v. The State* (4 W. Va. 755), VI, 298.

2. A witness may be contradicted by circumstances as well as by other witnesses. Courts and juries are not bound to refrain from exercising their judgment, and to blindly adopt the statements of the witness, for the simple reason that no other witness has denied them, and that the character of the witness is not impeached. 1871. *Ehwood v. The Western Union Telegraph Co.* (45 N. Y. 549), VI, 140.

3. A party introducing a witness does not thereby incur his credibility, although he cannot impeach him. 1870. *Jarnigan v. Fleming* (43 Miss. 710), V, 514.

4. **Privileged communication.** Where a party offers himself as a witness. he cannot refuse to answer questions on cross-examination, as to any conversations with his counsel. 1869. *Inhabitants of Woburn v. Henshaw* (101 Mass. 195), III, 333.

5. **Failure of defendant to testify — right of jury to consider.** On the trial of an indictment against a wife for being a common seller of intoxicating liq-

ors, the judge charged the jury "that the fact that defendant did not go upon the stand to testify, was a proper matter to be taken into consideration in determining the question of her guilt or innocence. *Held*, correct. 1871. *State v. Neaves* (59 Me. 298), VIII, 422.

6. When husband and wife are by statute excluded as witnesses "for or against each other," in an action against them for slanderous words spoken by the wife, she is a competent witness in her own behalf, and (ELLIOTT, J., dissenting) he is a competent witness in his own behalf. 1870. *Moulter v. Harding* (38 Ind. 176), V, 195.

7. Embezzlement of county funds, by a tax collector, is not an infamous crime, although punished as such, and does not exclude the offender as a witness, even while undergoing sentence. 1871. *Schuylkill County v. Copley* (67 Penn. St. 386), V, 441.

8. Where the sale of liquor is made a criminal offense by the statute, the purchaser of the same is not guilty of a criminal act, and hence is not excused from testifying as to the purchase on the ground that it would tend to criminate him. 1871. *State v. Rand* (51 N. H. 361), XII, 127.

9. Whether answers by a witness, claimed to be slanderous, were given under the belief that they were pertinent and relevant, or from malice, is a question for the jury. 1870. *White v. Carroll* (42 N. Y. 161), I, 503.

10. Before legislative bodies. The provision in the Declaration of Rights, that no person shall "be compelled to accuse or furnish evidence against him self," applies to investigations before a legislative body, and protects a person from being compelled to disclose the circumstances of his offense, the sources from which, or the means by which evidence of its commission, or of his connection with it may be obtained; nor is such protection withdrawn by any statute which fails to secure such person from future liability and exposure to be prejudiced in any criminal proceeding against him as fully and extensively as he would be secured by availing himself of the privilege accorded by the constitutional provision. 1871. *Emery's Case* (107 Mass. 172), IX, 22.

See WILL.

WRIT OF SUPPLICAVIT — *See SUPPLICAVIT.*

TABLE OF CASES REPORTED,

WITH REFERENCE TO THE VOLUMES AND PAGES OF THE STATE REPORTS, OF THE AMERICAN
REPORTS, AND TO THE PAGES OF THE DIGEST.

	PAGE.
Abbott v. Dutton, 44 Vt. 546; VIII, 894	23
Abrahams v. Kidney, 104 Mass. 222; VI, 220	11, 816
Abrahams v. Southwestern Railroad Bank, 1 S. C. (N. S.) 441; VII, 88 ..	119
Acer v. Westcott, 46 N. Y. 884; VII, 855	122
Adam v. Adam, 100 Mass. 865; I, 111	245, 838
Adams v. Adams, 51 N. H. 888; XII, 184	217, 245
Adams v. Clem, 41 Ga. 65; V, 524	181
Adams v. O'Connor, 100 Mass. 515; I, 187	6, 24, 40
Adams v. Reeves, 68 N. C. 184; XII, 627	254
Adams v. Waggoner, 88 Ind. 531; V, 230	20
Ætna Live Stock Fire and Tornado Ins. Co. v. Olmstead, 21 Mich. 246; IV, 488	190
Ætna Nat. Bank v. Fourth Nat. Bank of N. Y., 46 N. Y. 82; VII, 814	88
Aiken v. Boston, Concord & Montreal Railroad, 51 N. H. 504; XII, 149 ..	100
Akerley v. Vilas, 24 Wis. 165; I, 166	221, 306, 307
Aldrich v. Boston and Worcester Railroad Co., 100 Mass. 81; I, 76	359
Aldrich v. Drury, 8 R. I. 554; V, 624	298
Allen v. Berryhill, 27 Iowa, 534; I, 309	116, 155, 182
Allen v. Fox, 51 N. Y. 562; X, 641	306
Allen v. Inhabitants of Jay, 60 Me. 124; XI, 185	102, 259
Allen v. McCullough, 2 Heisk. 174; V, 27	239
Allen v. Mercantile Mutual Ins. Co., 44 N. Y. 487; IV, 700	215
Allen v. Sharpe, 37 Ind. 67; X, 80	58
Allander's Lessee v. Sussan, 88 Md. 11; III, 171	369
Almond v. Nugent, 84 Iowa, 300; XI, 147	298
Alter's Appeal, 67 Penn. St. 341; V, 438	267
American Contract Co. v. Cross, 8 Bush. 472; VIII, 871	85
American Express Co. v. Second National Bank, 69 Penn. St. 394; VIII, 268	76
American Railway Frog Co. v. Haven, 101 Mass. 898; III, 377	26, 236
Ames v. Foster, 106 Mass. 400; VIII, 843	329
Ammidown v. Freeland, 101 Mass. 303; III, 359	118, 223
Anderson v. Estate of Anderson, 42 Vt. 350; I, 334	182
Andrews v. State, 8 Heisk. 165; VIII, 8	90

	PAGE.
Annapolis and Elkridge R. R. Co. v. President and Directors of the Baltimore Fire Ins. Co., 82 Md. 87; III, 112	189
Antisdel v. Chicago and Northwestern Railway Co., 26 Wis. 145; VII, 44.	299
Armstrong County v. Clarion County, 66 Penn. St. 218; V, 368.....	118
Armstrong v. Gibson, 81 Wis. 61; XI, 599.....	46
Ashley v. Dixon, 48 N. Y. 480; VIII, 559.....	11
Atcheson v. Mallon, 48 N. Y. 147; III, 678.....	118
Atherton, State <i>ex rel.</i> , v. Sherwood, 15 Minn. 221; II, 116.....	151, 235
Atkins v. Gamble, 42 Cal. 86; X, 282.....	119, 331
Atkins v. Johnson, 48 Vt. 78; V, 260.....	115, 118, 322
Atlantic & Great Western Railway Co. v. Dunn, 19 Ohio St. 163; II, 382, 14	80, 128, 142
Atlas Bank v. Brownell, 9 R. I. 168; XI, 231.....	81, 337
Atlas Bank v. Doyle, 9 R. I. 76; XI, 219.....	43, 53
Attorney-General v. Tudor Ice Co., 104 Mass. 239; VI, 227.....	129
Attorney-General v. Woods, 106 Mass. 486; XI, 880.....	366
Atwood v. Holcomb, 89 Conn. 270; XII, 386	285
Andenried v. Philadelphia & Reading R. R. Co., 68 Penn. St. 370; VIII, 195..	62
Auditor v. Atchison, Topeka, etc., R. R. Co., 6 Kan. 500; VII, 575.....	107
Auditor of Wayne Co. v. Benoit, 20 Mich. 176; IV, 882	223
Augusta, City Council of, v. Sweeney, 44 Ga. 463; IX, 173.....	232
Aurora, City of, v. Reed, 57 Ill. 29; XI, 1.....	263
Austin v. N. J. Steamboat Co., 43 N. Y. 75; III, 663.....	270, 271
Ayer v. City of Norwich, 89 Conn. 376; XII, 396.....	179, 278
Ayrault v. Pacific Bank, 47 N. Y. 570; VII, 489.....	32
Badger v. Amer. Pop. Life Ins. Co., 103 Mass. 244; IV, 547.....	305
Bagott v. Mullen, 82 Ind. 332; II, 351.....	335, 336
Bailey v. Godfrey, 54 Ill. 507; V, 157.....	257
Baker v. Portland, 58 Me. 199; IV, 274.....	177, 277
Baker v. Wainwright, 86 Md. 336; XI, 495.....	326
Baldwin v. United States Telegraph Co., 45 N. Y. 744; VI, 165	341-343
Ball v. Liney, 48 N. Y. 6; VIII, 511	361
Baltimore City Passenger Railway Co. v. Sewell, 35 Md. 238; VI, 402..	7
	127, 144
Baltimore and Havre De Grace Turnpike Co. v. Union Railway Co. of Baltimore, 35 Md. 224; VI, 397.....	297, 299
Baltimore and Potomac R. R. Co. v. Magruder, 84 Md. 79; VI, 810	298
Bank of Commerce v. Owens, 81 Md. 320; I, 60.....	245
Bank of Louisiana v. Williams, 46 Miss. 618; XII, 819	92, 240
Bankard v. Baltimore & Ohio R. R. Co., 84 Md. 197; VI, 821.....	87
Barker v. Baltimore & Ohio R. R. Co., 22 Ohio St. 45; X, 726.....	817
Barker v. Bradley, 42 N. Y. 816; I, 521.	158, 328
Barker v. Savage, 45 N. Y. 191; VI, 66.....	174, 175
Barling v. West, 29 Wis. 307; IX, 576.....	260
Baron v. Eldredge, 100 Mass. 455; I, 126	67
Barrows v. Downs & Co., 9 R. I. 446; XI, 233.....	161

TABLE OF CASES REPORTED.

375

	PAGE.
Barter & Co. v. Wheeler, 49 N. H. 9; VI, 484	62, 66, 74, 75, 229, 301
Bartholomew v. St. Louis, etc., R. R. Co., 53 Ill. 227; V, 45	85
Bartlett v. Drake, 100 Mass. 174; I, 101	120, 124
Bartlett v. Tucker, 104 Mass. 836; VI, 240	43
Bassett v. Spofford, 45 N. Y. 887; VI, 101	63, 332
Bachelder v. Kenston, 51 N. H. 496; XII, 143	5, 365
Batchelder v. Low, 43 Vt. 662; V, 811	29
Bates v. Bates, 27 Iowa 110; I, 260	156
Bates v. Foster, 59 Me. 157; VIII, 406	122
Beardsley v. Hall, 36 Conn. 270; IV, 74	30, 282, 287, 335
Beatty v. Lycoming County Mutual Ins. Co., 66 Penn. 9; V, 318	202
Beach v. Miller, 51 Ill. 206; II, 290	130, 302
Beck v. Parker, 65 Penn. St. 262; III, 625	20, 25
Bedell v. Long Island R. R. Co., 44 N. Y. 387; IV, 688	273
Beery v. Irick, 22 Gratt. 484; XII, 589	304, 306
Belding v. State, 25 Ark. 315; IV, 26	20, 337
Belger v. Dinsmore, 51 N. Y. 166; X, 575	64
Bellefontaine Railway Co. v. Hunter, admr., 38 Ind. 335; V, 201	270, 272
Bemis v. Connecticut & Passumpsic River R. R. Co., 42 Vt. 375; I, 389..	272
	299, 300
Bender v. Crawford, 33 Tex. 745; VII, 270	230
Benedict v. Bachelder, 24 Mich. 425; IX, 130	335
Benedict v. Cowden, 49 N. Y. 396; X, 393	51, 58
Bennett v. Cook, 43 N. Y. 537; III, 727	232
Bennett v. Goldthwait, 109 Mass. 494; XII, 742	12, 26
Billings v. Worcester, 203 Mass. 339; III, 460	177
Binney v. Annan, 107 Mass. 94; IX, 10	221, 291
Bishop v. Schneider, 46 Mo. 472; II, 533	121, 122
Blackwell v. Willard, 65 N. C. 555; VI, 749	13, 359
Blair v. Forehand, 100 Mass. 136; I, 94	17, 104, 228
Blakely v. Patrick, 67 N. C. 40; XII, 600	256
Blake's Appeal, 68 Penn. St. 204; VIII, 169	216
Bledsoe v. Nixon, 69 N. C. 89; XII, 642	56, 216
Bliss v. Greeley, 45 N. Y. 671; VI, 157	132
Bliss v. Rawson, 43 Ga. 181; IX, 164	304
Blossom v. Dodd, 43 N. Y. 264; III, 701	64, 85
Blount v. Windley, 68 N. C. 1; XII, 616	32, 56, 291
Bloxham, Florida <i>ex rel.</i> , v. Gibbs, 13 Fla. 55; VII, 233	236
Board of Commissioners v. Elston, 32 Ind. 27; II, 327	88, 338
Bobbitt v. The Liverpool & London & Globe Ins. Co., 66 N. C. 70; VIII,	
494	188, 192
Bodine v. Exchange Fire Ins. Co., 51 N. Y. 117; X, 566	184, 196
Boehr v. Murphy, 46 Mo. 57; II, 485	172
Boggs v. State, 45 Ala. 30; VI, 680	137
Bohannon v. Commonwealth, 8 Bush. Ky. 481; VIII, 474	135, 136
Boies v. Hartford & N. Haven R. R. Co., 37 Conn. 272; IX, 347	360

	PAGE.
Bond v. Wilson, 8 Kans. 228; XII, 466.....	306
Boone v. Hall, 7 Bush. Ky. 66; III, 288.....	25, 231
Boothby v. Plaisted, 51 N. H. 496; XII, 140.....	112, 314
Bowen v. Bailey, 42 Miss. 405; II, 601.....	112, 129, 302
Bowen v. Hoskins, 45 Miss. 188; VII, 728.....	336
Bowker v. Smith, 48 N. H. 111; II, 189.....	290
Bowles v. Lewis, 48 Mo. 82; VIII, 85.....	356
Bowman v. Van Kuren, 29 Wis. 209; IX, 554.....	53
Boylston Ins. Co. v. Davis, 68 N. C. 17; XII, 624.....	344
Boynton v. Farmers' Mutual Fire Ins. Co., 43 Vt. 256; V, 276.....	200
Brabrook v. Boston Five Cents Savings Bank, 104 Mass. 228; VI, 222....	88
Bradford v. Andrews, 20 Ohio St. 208; V, 645.....	231
Bradford v. Bradford, 19 Ohio St. 546; II, 419.....	368
Bradford v. Rice, 102 Mass. 472; III, 488.....	30
Bradford v. Shine's Admrs., 18 Fla. 398; VII, 239.....	230
Bradley v. Ballard, 55 Ill. 418; VIII, 656.....	128
Bradley v. McAtee, 7 Bush. Ky. 667; III, 309.....	106, 265
Bradley v. Mut. Benefit Life Ins. Co., 45 N. Y. 422; VI, 115.....	206
Bradley v. Potomac Fire Ins. Co., 82 Md. 108; III, 121.....	195
Bradley v. Res, 103 Mass. 188; IV, 524.....	334
Bramhall v. Sun Mut. Ins. Co., 104 Mass. 510; VI, 261.....	212
Branson v. Hill, 31 Md. 181; I, 40.....	368
Breese v. United States Telegraph Co., 48 N. Y. 182; VIII, 526.....	341
Brewer, admr., v. Baxter, 41 Ga. 212; V, 530.....	367
Bridges v. Winters, 42 Miss. 135; II, 598.....	51
Briggs v. Ewart, 51 Mo. 245; XI, 445.....	53
Brigham v. Clafflin, 81 Wis. 607; XI, 628.....	9, 25, 221
Brinkley v. Brinkley, 50 N. Y. 184; X, 460.....	218, 244
Britton v. Dierker, 46 Mo. 591; II, 553.....	49
Broadway Baptist Church v. McAtee, 8 Bush. 508; VIII, 490.....	265
Brock v. Stimson, 108 Mass. 520; XI, 390.....	19
Bronson v. Coffin, 106 Mass. 175; XI, 335.....	131
Brooklyn, City of, v. Brooklyn City R. R. Co., 47 N. Y. 475; VII, 469....	263
Brooklyn Park Comrs. v. Armstrong, 45 N. Y. 234; VI, 70.....	253
Brookman v. Hammill, 48 N. Y. 554; III, 781.....	106, 220, 366
Brooks v. Cotton, 48 N. H. 50; II, 172.....	112
Brooks v. Curtis, 50 N. Y. 630; X, 545.....	290
Brooks v. People, 49 N. Y. 436; X, 398.....	141
Brown, to use of Clardy, v. Brown, 47 Mo. 130; IV, 320.....	327
Brown v. Clegg, 63 Penn. St. 51; III, 522.....	61
Brown v. Hannibal & St. Joseph R. R. Co., 50 Mo. 461; XI, 420.....	277
Brown v. O'Conne'l, 36 Conn. 432; IV, 89.....	284
Brown v. Quincy Mut. Fire Ins. Co., 105 Mass. 396; VII, 538.....	193
Brown v. Randall, 36 Conn. 56; IV, 35.....	234
Brown v. Rice, 57 Maine, 55; II, 11.....	183
Brown v. Wellington, 106 Mass. 318; VIII, 330.....	344

TABLE OF CASES REPORTED.

377

	PAGE.
Bruce v. Luke, 9 Kans. 201; XII, 491.....	128
Brumfield v. Carson, 83 Ind. 94; V, 184.....	326
Bryant v. Rich, 106 Mass. 180; VIII, 811.....	248, 306
Buchanan v. Curtis, 25 Wis. 99; III, 23.....	156, 173
Buckley v. Second Nat. Bank of Jersey City, 85 N. J. 400; X, 249.....	58
Buckner v. Kingsbury, 58 Ill. 310; XI, 67.....	121
Buell v. Flowers, 89 Conn. 462; XII, 414.....	292, 315
Bumpass v. Taggart, 26 Ark. 398; VII, 623.....	323
Bundy v. Hart, 46 Mo. 460; II, 525.....	319, 321
Bunge v. Koop, 48 N. Y. 235; VIII, 546.....	90
Bunnell v. Collinsville Savings Society, 83 Conn. 203; IX, 380.....	89
Burlington, City of, v. Gilbert, 81 Iowa, 356; VII, 143.....	267
Burnell v. N. Y. Cent. R. R. Co., 45 N. Y. 184; VI, 61.....	86
Burnett v. Eufaula Home Ins. Co., 46 Ala. 11; VII, 581.....	200
Burnheimer Bros. v. Hart, 27 Iowa, 19; I, 209.....	54
Burpee v. Sparhawk, 108 Mass. 111; XI, 820.....	30
Burrell Township v. Pittsburg Guardians, 62 Penn. 473; I, 441....	284, 285
Burrill v. Boardman, 43 N. Y. 254; III, 694.....	370
Burroughs v. North Carolina R. R. Co., 67 N. C. 376; XII, 611..	128, 147 314
Burroughs v. Norwich & Worcester R. R. Co., 100 Mass. 26; I, 78....	6, 71 72, 75
Burson v. Huntington, 21 Mich. 415; IV, 497.....	53, 323
Burt v. Merchants' Ins. Co., 106 Mass. 356; VIII, 339.....	101
✓ Burtis v. Thompson, 42 N. Y. 216; I, 546.....	9, 237
Burts v. Loyd, 45 Ga. 104; XII, 574.....	305
Bussey v. Hooper, 35 Md. 15; VI, 850.....	125
Bush v. Stowell, 71 Penn. St. 208; X, 694.....	52, 232
Butler v. Roys, 25 Mich. 53; XII, 218.....	844
Butterworth v. Crawford, 46 N. Y. 349; VII, 352.....	148
Cabot v. Christie, 42 Vt. 121; I, 313.....	124, 160, 168, 303
Caffrey v. Dudgeon, 38 Ind. 512; X, 126.....	307
Cahill v. Eastman, 18 Minn. 324; X, 184.....	4, 10, 209, 279
Calahan v. Babcock, 21 Ohio St. 281; VIII, 63.....	332
Calkins v. Smith, 48 N. Y. 614; VIII, 575.....	237
Camp v. Bostwick, 20 Ohio St. 387; V, 639.....	118
Campbell v. Dearborn, 109 Mass. 130; XII, 671.....	123, 254
Camp's Appeal, 26 Conn. 88; IV, 89.....	39, 170
Candee, Swan & Co. v. Deere & Co., 54 Ill. 439; V, 125.....	345
Caperton v. Martin, 4 W. Va. 138; VI, 270.....	100, 231, 357
Cardinal v. Smith, 109 Mass. 158; XII, 632.....	234
Carew v. Rutherford, 106 Mass. 1; VIII, 287.....	11, 93
Carey v. Guillow, 105 Mass. 18; VII, 494.....	304
Carpenter v. Farnsworth, 106 Mass. 561; VIII, 360.....	42
Carr v. Nat. Security Bank, 107 Mass. 45; IX, 6.....	33
Carrugi v. Atlantic Fire Ins. Co., 40 Ga. 135; II, 567.....	184
Carson v. Hunter, 46 Mo. 467; II, 529.....	111, 230, 353

	PAGE
Carter v. Allen, 59 Me. 296; VIII, 420.....	840
Cary v. Courtenay, 108 Mass. 816; IV, 559.....	55
Case v. Dennison, 9 K. I. 88; XI, 222.....	170
Case, Receiver, v. Henderson, 23 La. An. 49; VIII, 590.....	34
Cassell v. Bachrack, 42 Miss. 56; II, 590.....	90, 91
Cate v. Cate, 50 N. H. 144; IX, 179.....	13
Caulkins v. Hellman, 47 N. Y. 449; VII, 461.....	311, 324
Caulkins v. Whisler, 29 Iowa, 495; IV, 236.....	58
Cecil v. Beaver, 28 Iowa, 241; IV, 174.....	121
Central Savings Bank v. Shine, 48 Mo. 456; VIII, 112.....	172
Chaddock v. Vanness, 35 N. J. 517; X, 256.....	40, 53, 159
Chamberlain v. Bradley, 101 Mass. 188; III, 331.....	158
Chamberlain v. Western Transport. Co., 44 N. Y. 805; IV, 631.....	86
Chambers v. Rubey, 47 Mo. 99; IV, 318.....	231
Champion v. Gordon, 70 Penn. St. 474; X, 681.....	35, 89
Chapin v. Dake, 57 Ill. 295; XI, 15.....	39
Chapin v. Fellowes, 36 Conn. 182; IV, 49.....	211
Chapman v. Chicago & Northwestern R. Co., 26 Wis. 295; VII, 81.....	233
Charter Oak Life Ins. Co. v. Brant, 47 Mo. 419; IV, 328.....	211
Chase v. American Steamboat Co., 9 R. I. 419; XI, 274.....	230
Chase v. Cheney, 53 Ill. 509; XI, 95.....	149
Chicago v. McGinn, 51 Ill. 266; II, 295.....	95, 260, 365
Chicago & Alton R. R. Co. v. Murphy, 53 Ill. 336; V, 48.....	250
Chicago & Alton R. R. Co. v. Pondrom, 51 Ill. 333; II, 306.....	81, 275, 276
Chicago & Alton R. R. Co. v. Randolph, 53 Ill. 510; V, 60.....	83
Chicago, Burlington & Quincy R. R. Co. v. Dunn, 52 Ill. 260; IV, 606..	7, 239
Chicago, City of, v. Langlass, 52 Ill. 256; IV, 603..	143
Chicago & Northwestern Railway Co. v. People <i>ex rel.</i> Hempstead, 56 Ill. 865; VIII, 690.....	68
Chicago & Northwestern Railway Co. v. Jackson, 55 Ill. 492; VIII, 661..	252
Chicago & Northwestern R. R. Co. v. Simonson, 54 Ill. 504; V, 155.....	273
Chicago & Northwestern Railway Co. v. Williams, 55 Ill. 185; VIII, 641..	80
Chicago & Rock Island R. R. Co. v. Fahey, 52 Ill. 81; IV, 587.....	85
Choyneki v. Cohen, 39 Cal. 501; II, 476.....	346
Christenson v. American Express Co., 15 Minn. 270; II, 123.....	75
Cincinnati, City of, v. Penny, 21 Ohio St. 499; VIII, 73.....	264
Cincinnati, Hamilton, etc., R. R. Co. v. Pontius, 19 Ohio St. 231; II, 391, 73	
Cincinnati Mut. Assurance Co. v. Rosenthal, 55 Ill. 85; VIII, 626.....	186
Cincinnati & Zanesville R. R. Co. v. Smith, 23 Ohio St. 227; X, 729.....	300
Citizens' Bank of Baltimore v. Graffin, 81 Md. 509; I, 66.....	141, 254
Citizens' Fire Ins., Security and Loan Co. v. Doll, 35 Md. 89; VI, 360..	193
	200, 202, 303
City of Augusta v. North, 57 Me. 392; II, 55.....	98, 339
City of Aurora v. Reed, 57 Ill. 29; XI, 1.....	364
City of Bridgeport v. N. Y. & N. Haven R. R. Co., 36 Conn. 255; IV, 63..	266
	301

TABLE OF CASES REPORTED.

379

	PAGE.
City of Brooklyn v. Brooklyn City R. R. Co., 47 N.Y. 475; VII, 469	268
City of Burlington v. Gilbert, 81 Iowa, 356; VII, 148	267
City of Chicago v. Langlass, 52 Ill. 256; IV, 608	148, 262
City of Chicago v. McGinn, 51 Ill. 266; II, 295	95
City of Cincinnati v. Penny, 31 Ohio St. 499; VIII, 78	264
City of Clinton v. Phillips, 58 Ill. 102; XI, 52	259
City Council of Augusta v. Sweeney, 44 Ga. 463; IX, 172	282
City of Delphi v. Evans, 36 Ind. 90; X, 12	174, 263
City of Dubuque v. Stout, 32 Iowa, 80; VII, 171	258
City of Evansville v. Pfisterer, 34 Ind. 86; VII, 214	267
City of Muscatine v. Sterneman, 30 Iowa, 526; VI, 685	323, 324
City of New Haven v. Fair Haven & Westfield R. R. Co., 38 Conn. 423; IX, 399	266
City of New Haven v. Sargent, 38 Conn. 50; IX, 360	174, 263
City of St. Charles v. Nolle, 51 Mo. 123; XI, 440	260
Clark v. Thayer, 105 Mass. 216; VII, 511	49
Clark v. Washington, etc., Ins. Co., 100 Mass. 563; I, 185	158, 212
Clark v. Wells, 45 Vt. 4; XII, 187	313
Clark v. Whitaker, 50 N. H. 474; IX, 286	46
Clark v. Wilson, 103 Mass. 219; IV, 533	7, 143, 144, 187, 316
Clarke v. Lancaster, 36 Md. 196; XI, 486	159
Clapp v. City of Burlington, 42 Vt. 579; I, 355	38, 338
Clay v. Edgerton, 19 Ohio St. 549; II, 422	43
Clemens v. Clemens, 28 Wis. 637; IX, 520	169
Clerk's Office v. President, Directors and Company of the Bank of Cape Fear, 66 N. C. 314; VIII, 506	31
Cleveland, etc., R. R. Co. v. Curran, 19 Ohio St. 1; II, 362	86
Clifton v. Foster, 103 Mass. 238; IV, 539	27
Clinton, City of, v. Phillips, 58 Ill. 102; XI, 52	259
Clinton v. Myers, 46 N. Y. 511; VII, 873	363
Closson v. Staples, 42 Vt. 209; I, 316	235
Cochecho Nat. Bank v. Haskell, 51 N. H. 116; XII, 67	31, 155
Cochran v. Guild, 106 Mass. 29; VIII, 296	339
Coffey v. Nat. Bank of the State of Missouri, 46 Mo. 140; II, 488	36, 38 144
Cogdell v. Exum, 69 N. C. 464; XII, 657	9, 26, 31, 221
Cohen v. N.Y. Mut. Life Ins. Co., 50 N.Y. 610; X, 522	210
Cole v. Drew and Wife, 44 Vt. 49; VIII, 363	174
Coleman v. Holmes, 44 Ala. 124; IV, 121	231, 351
Collins v. City of Council Bluffs, 33 Iowa, 324; VII, 200	143, 177, 261, 293
Colter v. Lower, 35 Ind. 285; IX, 735	164
Colton v. Cleveland & Pittsburg R. R. Co., 67 Penn. St. 211; V, 424	66
Coombs v. New Bedford Cordage Co., 102 Mass. 572; III, 506	252
Commercial Ins. Co. v. Spankneble, 52 Ill. 53; IV, 582	184, 192, 199, 241
Commissioners of Leavenworth Co. v. Miller, 7 Kans. 479; XII, 425	103 228, 267, 268

	PAGE.
Commonwealth v. Bennett, 108 Mass. 80, XI, 304.....	331
Commonwealth v. Birdsall, 69 Penn. St. 432; VIII, 238.....	138
Commonwealth v. Burke, 105 Mass. 376; VII, 531.....	141
Commonwealth v. Cook, 8 Bush. Ky. 220; VIII, 456.....	164
Commonwealth v. Eastern R. R. Co., 108 Mass. 254; IV, 555.....	99 900
Commonwealth v. Erie Railway Co., etc, 62 Penn. St. 296; I, 399... 94	97
	152, 324, 330
Commonwealth v. Gamble, 63 Penn. St. 343; I, 422.....	104, 282
Commonwealth v. Kane, 108 Mass. 423; XI, 373.....	283
Commonwealth v. Killian, 109 Mass. 345; XII, 714.....	301
Commonwealth v. Lockwood, 109 Mass. 323; XII, 699..	107, 286
Commonwealth v. Mason, 105 Mass. 168; VII, 507.....	140
Commonwealth v. McAfee, 108 Mass. 458; XI, 383.....	139, 239
Commonwealth v. Pennsylvania Canal Co., 66 Penn. 41; V, 329.	100, 364
Commonwealth v. Strupney, 105 Mass. 588; VII, 556.....	139
Commonwealth v. Tobin, 108 Mass. 426; XI, 375.....	19, 375
Commonwealth v. Vermont & Mass. R. R. Co., 108 Mass. 7; XI, 301..	78, 88
Comrs. on Inland Fisheries v. Holyoke Water Power Co., 104 Mass. 446;	
VI, 247.....	96, 166
Congar v. Chicago & Northwestern Railway Co., 24 Wis. 157; I, 164...	13
	62
Congress & Empire Spring Co. v. High Rock Congress Spring Co., 45 N. Y.	
291; VI, 82.....	346
Conhocton Stone Road v. Buffalo, N. Y. & Erie R. R. Co., 51 N. Y. 573; X,	
646.....	279
Conkey v. Milwaukee & St. Paul Railway Co., 31 Wis. 619; XI, 630.....	73
Conner v. Southern Express Co., 42 Ga. 37; V, 543.....	12, 27
Conner, Matter of, 36 Cal. 96; II, 427.....	221
Connolly v. Davidson, 15 Minn. 519; II, 154.....	251
Connolly v. Warren, 106 Mass. 146; VIII, 300.....	85
Cook v. City of Burlington, 30 Iowa, 94; VI, 649.....	5, 259, 296
Cook v. City of Milwaukee, 24 Wis. 270; I, 183.....	176
Cook v. Deerfield Township, 64 Penn. St. 445; III, 605.....	263
Cook v. Pridgen, 45 Ga. 331; XII, 589.....	362
Cook v. State Nat. Bank of Boston, 52 N. Y. 96; XI, 667.....	9, 36, 38, 307
Coolidge v. Hager, 43 Vt. 9; V, 256.....	363
Coolley v. Inhabitants of Westbrook, 57 Me. 181; II, 30.....	175, 263
Cooper v. Massachusetts Mutual Life Ins. Co., 103 Mass. 227; III, 451..	208
Cooper v. McCrimmin, 33 Tex. 383; VII, 268.....	107
Cooper v. Pacific Mutual Ins. Co. of California, 7 Nev. 116; VIII, 705....	204
Copelin v. The Phoenix Ins. Co., 46 Mo. 311; II, 504.....	213
Corey v. Ripley, 57 Me. 69; II, 19.....	29
Cormier v. Bienvenu, 22 La. An. 300; II, 728.....	115
Corn Exchange Ins. Co. v. Babcock, 42 N. Y. 618; I, 601.....	239 240
Corv v. Boylston Fire and Marine Ins. Co., 107 Mass. 140; IX, 14..	185, 214
Cosgrove v. Ogden, 49 N. Y. 255; X, 361.....	247, 276

TABLE OF CASES REPORTED.

381

	PAGE.
Cotton v. Ulmer, 45 Ala. 878; VI, 708.....	366
Couch v. The City Fire Ins. Co. of Hartford, 38 Conn. 181; IX, 875.....	197
Cover v. Davenport, 1 Heiskell, 368; II, 706.....	287
Cowdry v. Coit, 44 N. Y. 883; IV, 690.....	155
Cowell v. Lumley, 39 Cal. 151; II, 480.....	235
Cowing v. Manley, 49 N. Y. 192; X, 346.....	287
Cox v. Cox, 19 Ohio St. 503; II, 415.....	243
Cragin v. N. Y. Cent. R. R. Co., 51 N. Y. 61; X, 559.....	88
Craig v. Kline, 65 Penn. St. 399; III, 636.....	95, 167
Crane v. Reeder, 21 Mich. 24; IV, 480.....	120, 158, 230
Cranston v. Goss, 107 Mass. 439; IX, 45.....	54, 334
Cratty v. City of Bangor, 57 Me. 423; II, 56.....	11, 333
Crisfield v. Storr, 36 Md. 129; XI, 480.....	369
Crocker v. Marine Nat. Bank of New York, 101 Mass. 240; III, 336... 9,	37
Cromwell v. The Brooklyn Fire Ins. Co., 44 N. Y. 42; IV, 641.....	208
Cronan v. Cotting, 104 Mass. 245; VI, 283.....	26
Cronley v. Hall, 67 N. C. 9; XII, 597.....	91, 358
Cross v. O'Donnell, 44 N. Y. 661; IV, 731.....	63, 325
Cuff v. Newark & New York B. R. Co., 35 N. J. 17; X, 205.....	8, 281
Curtiss v. Whipple, 24 Wis. 350; I, 187.....	339
Cutts v. Brainerd, 42 Vt. 566; I, 353.....	71
Dailey v. Coker, 33 Tex. 815; VII, 279.....	323
Dale v. Gear, 38 Conn. 15; IX, 353.....	54
D'Armond v. Dubose, 22 La. An. 181; II, 718.....	323
Darst v. People, 51 Ill. 286; II, 301.....	259, 281
Davis v. Bagley, 40 Ga. 181; II, 570.....	155, 163
Davis v. Bigler, 62 Penn. 242; I, 398.....	311
Davis v. Detroit & Milwaukee R. R. Co., 20 Mich. 105; IV, 364.....	250
Davis v. Munson, 43 Vt. 676; V, 315.....	309
Davis v. Richardson, 45 Miss. 499; VII, 732.....	323
Davis v. State, 35 Ind. 495; IX, 760.....	223, 277
Dawson v. St. Paul Fire Ins. Co., 15 Minn. 186; II, 109.....	149, 178, 181
Day v. Pool, 53 N. Y. 416; XI, 719.....	313
Day v. Zimmerman, 68 Penn. St. 72; VIII, 157.....	21
Daylight Burner Co. v. Odlin, 51 N. H. 56; XII, 45.....	14, 68
Deering v. Boyle, 8 Kans. 525; XII, 480.....	43, 240
DeFeret v. Bank of America, 23 La. An. 310; VIII, 597.....	35, 163
Defrese v. State, 3 Heisk., Tenn. 53; VIII, 1.....	140
Degunther, State and, v. Douglass, 26 Wis. 423; VII, 87.....	105, 283
Delashman v. Berry, Admr. of Kellogg, 20 Mich. 292; IV, 392..	227
Delhi, Village of, v. Youmans, 45 N. Y. 363; VI, 100.....	364
Deming v. Grand Trunk Railway Co., 48 N. H. 455; II, 267.....	63, 144
Dennett v. Penobscot Fair Ground Co., 57 Me. 425; II, 58.....	352
Depere, Town of, v. Bellevue, Town of, 31 Wis. 120; XI, 602.....	253
Derby v. Thrall, 44 Vt. 413; VIII, 389.....	51
Derocher v. Continental Mills, 58 Me. 217; IV, 236.....	180, 253

	Page.
Des Moines Valley R. R. v. Graff, 27 Iowa, 99; I, 256	110, 349
Desmond v. Brown, 29 Iowa, 53; IV, 194	331
Detroit v. Blakeby, 21 Mich. 84; IV, 450	261
Dever v. Steamboat Hope, 42 Miss. 715; II, 648	220
Dewey v. McLain, 7 Kans. 126; XII, 418	356
Dexter v. Norton, 47 N. Y. 62; VII, 415	312
Dexter v. Syracuse, etc., R. R. Co., 42 N. Y. 326; I, 527	84
Dickens' Case, 67 Penn. St. 169; V, 420	22
Dickenson v. Chamber of Commerce of Milwaukee, 29 Wis. 45; IX, 544 ..	126
Dickerman v. Day, 81 Iowa, 444; VII, 156	351
Dickerson v. Wason, 47 N. Y. 439; VII, 455	16
Dietrich v. Pennsylvania R. R. Co., 71 Penn. St. 433; X, 711	80
Dillard v. The Manhattan Life Ins. Co., 44 Ga. 119; IX, 167	210
Dittmer & Pelle v. Germania Ins. Co. of N. Orleans, 23 La. An. 458; VIII, 600	196
Dodge v. Nat. Exchange Bank, 20 Ohio St. 234; V, 648	34
Doe dem. Potts v. Dowdall, 8 Houst., Del. 369; XI, 757	154
Donley v. Tindall, 32 Tex. 43; V, 234	45, 91, 92, 160
Don Moran v. People, 25 Mich. 356; XII, 233	141
Donnell v. State, 48 Miss. 661; XII, 875	89, 107
Downer v. Chesebrough, 36 Conn. 89; IV, 29	57, 111, 159, 229
Downs v. N. Y. & N. Haven R. R. Co., 36 Conn. 287; IV, 77	79
Dorman v. City of Jacksonville, 13 Fla. 538; VII, 253	262
Dorr v. Harrahan, 101 Miss. 531; III, 398	132
Dorsey v. Dorsey, 37 Md. 64; XI, 528	97
Doubleday v. Kress, 50 N. Y. 410; X, 502	14
Douglas v. Matting, 29 Iowa, 498; IV, 238	53
Doupe v. Genin, 45 N. Y. 119; VI, 47	225
Draper v. Hitt, 48 Vt. 439; V, 292	4, 292, 345
Dubuque, City of, v. Stout, 32 Iowa, 80; VII, 171	258
Duffy v. Hobson, 40 Cal. 240; VI, 617	60, 323
Duffy v. Wunsch, 42 N. Y. 243; I, 514	328
Dugan v. Anderson, 36 Md. 567; XI, 509	9, 117
Duker v. Franz, 7 Bush. 273; III, 314	51
Du Laurans v. First Div. of the St. Paul & Pacific R. R. Co., 15 Minn. 49; II, 102	78
Dungan's Appeal, 68 Penn. St. 204; VIII, 169	216
Dunlap v. Cody, 31 Iowa, 260; VII, 129	222
Dunn v. Grand Trunk Railway, 58 Me. 187; IV, 267	83
Dunn v. Johnson, 33 Ind. 54; V, 177	117, 145
Durkee v. The City of Janesville, 28 Wis. 464; IX, 500	96
Durst v. Burton, 47 N. Y. 167; VII, 428	14
Dye v. Dye, 21 Ohio St. 86; VIII, 40	336
Dyer v. Grand Trunk Railway Co., 42 Vt. 441; I, 350	63
Dyke v. Erie Railway Co., 45 N. Y. 113; VI, 48	62, 83, 229
East Kingston v. Towle, 48 N. H. 57; II, 174	17, 103, 162

TABLE OF CASES REPORTED.

383

	PAGE.
East Saginaw Manuf. Co. v. City of East Saginaw, 19 Mich. 259; II, 83..	98
	109, 334
Eaton v. Boston, Concord & Montreal R. R., 51 N. H. 504; XII, 147.....	100
	297, 298
Eaton v. European & Northern Railway Co., 59 Me. 520; VIII, 430.....	249
Eaton v. Hill, 50 N. H. 285; IX, 189.....	180
Eaton v. Winnie, 20 Mich. 156; IV, 377.....	11
Eckert v. Long Island R. R. Co., 48 N. Y. 503; III, 731.....	276
Edmonds v. Banbury, 28 Iowa, 267; IV, 177.....	107, 151
Edson v. Edson, 108 Mass. 590; XI, 393.....	245
Edwards v. White Line Transit Co., 104 Mass. 159; VI, 213.....	67
Eidman v. Bowman, 58 Ill. 444; XI, 90.....	128
Eilbert v. Finkbeiner, 68 Penn. St. 243; VIII, 176.....	41
Ela v. Amer. Merchants' Union Ex. Co., 39 Wis. 611; IX, 619.....	77, 78
Elder v. Reel, 62 Penn. St. 303; I, 414.....	243, 246, 247
Elliott v. Lycoming County Mutual Ins. Co., 66 Penn. 22; V, 323..	197, 198
Ellis v. Albany City Fire Ins. Co., 50 N. Y. 402; X, 495.....	185
Ellis v. Buzzell, 60 Me. 209; XI, 204.....	320
Ellis v. Maxson, 19 Mich. 186; II, 81.....	157, 294
Ellis v. Wire, 33 Ind. 127; V, 189.....	144
Elwood v. Western Union Teleg. Co., 45 N. Y. 549; VI, 140.....	343, 371
Emery's Case, 107 Mass. 172; IX, 23.....	373
Emery v. Huntington, 109 Mass. 431; XII, 725.....	317
Empire Trans. Co. v. Wallace, 68 Penn. St. 302; VIII, 178.....	64
Empire Trans. Co. v. Wamsutta Oil Co., 63 Penn. St. 14, III, 515.....	65
Engel v. Scheuerman, 40 Ga. 206; II, 573.....	181
English v. Smock, 34 Ind. 115; VII, 215.....	222
Equitable Life Insurance v. Paterson, 41 Ga. 338; V, 535.....	207, 208
Erie Railway Co. v. Commonwealth, 66 Penn. St. 84; V, 351.....	338, 339
Estes v. Tower, 102 Mass. 65; III, 439.....	9, 52
Esty v. Clark, 101 Mass. 36; III, 320.....	237
Evans v. Columbian Ins. Co., 44 N. Y. 146; IV, 650.....	214
Evansville, City of, v. Pfisterer, 34 Ind. 36; VII, 214.....	267
Exchange Bank of St. Louis v. Rice, 107 Mass. 37; IX, 1.....	33
Ex parte Holman, 28 Iowa, 88; IV, 159.....	222
Ex parte Martin, 7 Nev. 140; VIII, 707.....	96
Ex parte McLaughlin, 41 Cal. 211; X, 272.....	135
Ex parte Selma & Gulf R. R. Co., 45 Ala. 696; VI, 723.....	267
Ex parte Voltz, 37 Ind. 175; X, 86.....	19
Fairbanks v. Kerr, 70 Penn. St. 86; X, 664.....	278, 295
Farley v. Lincoln, 51 N. H. 577; XII, 182.....	306, 312, 352
Farrar v. Pearson, 57 Me. 561; VIII, 439.....	289
Faulds v. Yates, 57 Ill. 416; XI, 24.....	126
Feigley v. Whitaker, 22 Ohio St. 606; X, 778.....	289
Feital v. Middlesex R. R. Co., 109 Mass. 398; XII, 720.....	84, 157, 272, 324
Fenner v. Buffalo & State Line R. R. Co., 44 N. Y. 505; IV, 709.....	70

	PAGE.
Fernandez v. Great Western Ins. Co., 48 N. Y. 571; VIII, 571.....	213
Fernandez v. N. Y. Mut. Ins. Co., 48 N. Y. 571; VIII, 571.....	213
Ferree v. Oxford Fire and Life Ins. Co., 67 Penn. St. 373; V, 436.....	200
Fetters v. Muncie Nat. Bank, 34 Ind. 251; VII, 235.	41, 55
Fields v. State, 47 Ala. 603; XI, 771.....	183
Filer v. N. Y. Cent. R. R. Co., 49 N. Y. 47; X, 327.....	239, 270
Fink v. Tatman, 36 Ind. 259; X, 19.....	145
First Nat. Bank of Angelica v. Hall, 44 N. Y. 395; IV, 698.....	32, 43, 162
First Nat. Bank of Bellefont v. McManigle, 69 Penn. St. 156; VIII, 236, 157	239
First Nat. Bank of Columbus v. Garlinghouse, 22 Ohio St. 492; X, 751..	37
	44
First Nat. Bank v. Marietta, etc., R. R. Co., 20 Ohio St. 259; V, 655..	84, 85
First Nat. Bank of Jersey City v. Leach, 52 N. Y. 350; XI, 708....	36
First Nat. Bank v. Plankinton, 27 Wis. 177; IX, 453.....	351
First Nat. Bank of Plymouth v. Price, 33 Md. 487; III, 204.....	92, 129
First Nat. Bank of Whitehall v. Lamb, 50 N. Y. 95; X, 438.....	37
First Presbyterian Church v. City of Fort Wayne, 36 Ind. 388; X, 35...	265
	266
Fisher v. Brown, 104 Mass. 259; VI, 235.....	60
Fisher v. City of Boston, 104 Mass. 87; VI, 196.....	7, 264
Fisher v. Thirkell, 21 Mich. 1; IV, 422.....	8, 226, 271, 230
Fisk v. Cottenet, 44 N. Y. 538; IV, 715.....	187, 188
Fitzpatrick v. Hearne, 44 Ala. 171; IV, 128.....	151, 322
Fitzsimmons v. Southern Express Co., 40 Ga. 330; II, 577.....	13
Flanagan v. People, 52 N. Y. 467; XI, 731.....	136
Flint and Fentonville Plank-road Co. v. Woodhull, 25 Mich. 99; XII, 233	129
Flower and wife v. Pennsylvania R. R. Co., 69 Penn. St. 210; VIII, 251	253
Floyd v. Erie Railway Co., 45 N. Y. 113; VI, 43.....	62, 83
Flynn v. San Francisco & San Jose R. R. Co., 40 Cal. 14; VI, 595.....	273
Fonda v. Jones, 42 Miss. 792; II, 669.....	353
Foot v. Bentley, 44 N. Y. 166; IV, 652.....	157, 313
Forbes v. Howe, 102 Mass. 427; III, 475.....	29
Forsythe v. Beveridge, 53 Ill. 268; IV, 612.....	22
Forsyth v. Mayor, etc., of Atlanta, 45 Ga. 152; XII, 576.....	260
Foshay v. Glen Haven, 25 Wis. 288; III, 73.....	179, 278
- Foster v. The Richard Busted, 100 Mass. 409; I, 125.....	106, 219, 253
Fowler, People ex rel. v. Bull, 46 N. Y. 57; VII, 302.....	105, 232
Fox, will of, 52 N. Y. 530; XI, 751.....	368, 369
Frank v. Morris, 57 Ill. 188; XI, 4.....	350
Frankenberg v. Ill. Cent. R. R. Co., 54 Ill. 88; V, 92.....	65
Franklin Fire Ins. Co. v. Chicago Ice Co., 36 Md. 102; XI, 469..	192, 198, 202
Fraser v. Freeman, 43 N. Y. 566; III, 740.....	249
Freeman v. Freeman, 43 N. Y. 84; III, 657.....	120, 326
Freese v. Brownell, 35 N. J. 235; X, 239.....	56, 351

TABLE OF CASES REPORTED.

385

	PAGE.
French v. Vining, 103 Mass. 182; III, 440.....	10, 814
Frenzel v. Miller, 87 Ind. 1; X, 62.....	117, 168, 852
Friedlander v. Pugh, Slocomb & Co., 48 Miss. 111; V, 478.....	145
Frink v. Bellis, 88 Ind. 185; V, 193.....	7, 182, 168
Fry's Election Case, 71 Penn. St. 302; X, 698.....	150
Fulmer v. Seitz, 68 Penn. St. 237; VIII, 172.....	50
Funk v. Smith, 66 Penn. St. 27; V, 826.....	233
Fuss v. Fuss, 24 Wis. 256; I, 180.....	242
Gager v. Babcock, 48 N. Y. 154; VIII, 533.....	817
Gale v. Village of Kalamazoo, 23 Mich. 844; IX, 80.....	258
Galvin v. Prentice, 45 N. Y. 163; VI, 58.....	116, 157
Gandy v. Chicago and Northwestern R. R. Co., 80 Iowa, 420; VI, 682....	274
Gardner v. Hope Ins. Co., 9 R. I. 194; XI, 388.....	126
Gardner v. Merritt, 32 Md. 78; III, 115.....	171
Garner v. Hudgins, 46 Mo. 399; II, 520....	339
Garnsey v. Rogers, 47 N. Y. 233; VII, 440.....	255
Garrard v. Haddan, 67 Penn. St. 83; V, 412.....	50
Garrett v. Cheshire, 69 N. O. 396; XII, 647.....	98, 164, 179
Garretzen v. Duencel, 50 Mo. 104; XI, 405.....	247
Gartside v. Outley, 58 Ill. 210; XI, 59.....	226, 256
Garvey v. Jarvis, 46 N. Y. 810; VII, 385.....	349
Gates v. Hackethal, 57 Ill. 584; XI, 45....	351
Gault v. Brown, 48 N. H. 183; II, 210.....	329
Georgia Nat'l Bank v. Henderson, 46 Ga. 487; XII, 590.....	38
Georgia R. R. and Banking Co. v. McCurdy, 45 Ga. 288; XII, 577.....	82
German Mutual Ins. Co. v. Grim, 32 Ind. 249; II, 841.....	124
Gerrish v. Clough, 48 N. H. 9; II, 165.....	363
Getty v. Binsse, 49 N. Y. 385; X, 379.....	44, 336
Geyer v. John Hancock Mutual Life Ins. Co., 50 N. H. 234; IX, 185....	305
Gibbs v. Linaburry, 23 Mich. 479; VII, 675.....	58
Gibson v. Bingham, 43 Vt. 410; V, 289.....	11, 292, 815
Gibson v. Pacific R. R. Co., 46 Mo. 168; II, 497.....	251
Gibson v. Tobey, 46 N. Y. 637; VII, 397.....	291, 315
Gill and Wife v. Middleton, 105 Mass. 477; VII, 548.....	225
Gilliam v. Chancellor and Murray, Exrs., 48 Miss. 437; V, 498.....	371
Gillott v. Esterbrook, 48 N. Y. 374; VIII, 553.....	346
Gilman v. County of Douglas, 6 Nev. 27; III, 237.....	171
Gilson v. Gwinn, 107 Mass. 126; IX, 13.....	63
Girdner v. Stephens, 1 Heisk. 280; II, 700.....	100, 230
Gladius et al. v. Black, 50 N. Y. 145; X, 449....	113
Glass v. Hulbert, 103 Mass. 24; III, 418.....	123, 326
Glenn v. Davis, Trustee, 35 Md. 208; VI, 389.....	149, 290
Goddard v. Grand Trunk Railway Co., 57 Me. 202; II, 39.....	142, 243
Goddard v. Monitor Mut. Fire Ins. Co., 108 Mass. 56; XI, 307.....	194
Goggans, Admr., v. Turnipseed, 1 S. C. (N. S.) 80; VII, 23....	99, 216
Gooding v. Shea, 108 Mass. 360; IV, 563.....	7, 255

	PAGE.
Goodnough v. City of Oshkosh, 24 Wis. 549; I, 203.....	175, 261
Goodrich v. Tracy, 43 Vt. 814; V, 281.....	5, 8, 241
Goodrich v. Weston, 102 Mass. 363; III, 469.....	157
Goodwin v. Baltimore & Ohio R. R. Co., 50 N. Y. 154; X, 457.....	69
Gould v. Mansfield, 103 Mass. 406; IV, 573.....	327, 367
Gould v. Stevens, 43 Vt. 125; V, 265.....	48
Gove v. Farmers' Mutual Fire Ins. Co., 48 N. H. 41; II, 168.....	187
Grace v. Adams, 100 Mass. 505; I, 181.....	64
Grace v. Mitchell, 81 Wis. 533; XI, 613.....	12, 163, 306
Grady v. Wolsner, 46 Ala. 381; VII, 593.....	280
Graff v. Fitch, 58 Ill. 373; XI, 85.....	310
Graham, Admr., v. Plate, 40 Cal. 598; VI, 639.....	347
Graham v. Connersville & New Castle Junction R. R. Co., 86 Ind. 463; X, 56.....	152, 298
Graham v. King, 50 Mo. 22; XI, 401.....	278
Grant v. City of Erie, 69 Penn. St. 420; VIII, 273.....	7, 264
Graves v. Hartford & N. Y. Steamboat Co., 38 Conn. 43; IX, 369.....	70
Gray & Bell v. Scott and Wife, 66 Penn. St. 345; V, 571.....	276
Gray v. Harris, 107 Mass. 492; IX, 61.....	142, 362
Gray v. Jackson, 51 N. H. 9; XII, 1.....	62, 72, 220
Green v. Brookins, 23 Mich. 48; IX, 74.....	329
Green v. Drummond, 31 Md. 71; I, 14.....	152, 303, 328
Green v. Holway, 101 Mass. 243; III, 339.....	323
Greenleaf v. Illinois Central R. R. Co., 29 Iowa, 14; IV, 181.....	252
Gregory v. King, 58 Ill. 169; XI, 56.....	39
Grevemeyer v. Southern Mutual Fire Ins. Co., 62 Penn. St. 340; I, 420..	191 219
Grimes v. Harmon, 35 Ind. 198; IX, 690.....	370
Griswold v. Sabin, 51 N. H. 167; XII, 76.....	145, 168, 354
Grymes v. Hone, 49 N. Y. 17; X, 313.....	170
Guerand v. Dandeleit, 32 Md. 561; III, 164.....	116, 181
Guice, Admr., v. Sellers, 43 Miss. 52; V, 476.....	54, 219, 353
Guillaume v. Hamburg & Amer. Packet Company, 42 N. Y. 212; I, 512..	67
Gyger's Appeal, 62 Penn. St. 78; I, 332.....	288, 299
Haak v. Linderman, 64 Penn. St. 499; III, 613.....	312
Haddock v. Crocheron, 33 Tex. 276; V, 244.....	239
Hagar v. Buck, 44 Vt. 285; VIII, 363.....	181
Haggard v. Conkwright, 7 Bush. 16; III, 297.....	358
Halle v. Peirce, 33 Md. 327; III, 139.....	42, 161
Hale v. Huston, 44 Ala. 134; IV, 124.....	45, 91, 92
Hale v. Milwaukee Dock Co., 29 Wis. 483; IX, 608.....	360
Hale v. Walker, 31 Iowa, 344; VII, 137.....	37
Haley v. City of Philadelphia, 68 Penn. St. 45; VIII, 153.....	330
Hall v. Corcoran, 107 Mass. 251; IX, 30.....	334
Hall v. Costello, 48 N. H. 176; II, 207.....	115, 161
Hall v. Finch, 29 Wis. 278; IX, 559.....	110

TABLE OF CASES REPORTED.

387

	PAGE.
Hall v. Thayer, 105 Mass. 219; VII, 518.....	216
Halsey v. Norton, 45 Miss. 708; VII, 745.....	26, 289
Hamilton v. State, 86 Ind. 280; X, 22.....	183, 187, 156
Hamilton v. Windolf, 86 Md. 301; XI, 491.....	11, 147
Hammett v. Philadelphia, 65 Penn. St. 146; III, 615.....	106, 265
Hammond v. Corbett, 50 N. H. 501; IX, 288.....	285
Hammond v. Hannin, 21 Mich. 874; IV, 490.....	145, 354
Hammond v. Hussey, 51 N. H. 40; XII, 41.....	8, 14, 92
Handley v. Pfister, 39 Cal. 283; II, 449.....	146
Hanson v. McCue, 42 Cal. 803; X, 299.....	364
Hanson v. Vernon, 27 Iowa, 28; I, 215.....	97, 102, 152, 267, 330, 340
Harding v. Town of Townshend, 43 Vt. 536; V, 804.....	143, 187
Harpending v. Haight, 39 Cal. 189; II, 432.....	97, 172, 235
Harper by Wood v. Indianap. & St. Louis R. R. Co., 47 Mo. 567; IV, 853.....	250
Harris v. Frink, 49 N. Y. 24; X, 818.....	152, 353
Harris v. Social Manuf. Co., 8 R. I. 183; V, 549.....	18
Harris v. Social Manuf. Co., 9 R. I. 99; XI, 224.....	18
Harrison v. People of State of N. Y., 50 N. Y. 518; X, 517.....	140
Hartford Fire Ins. Co. v. Walsh, 54 Ill. 164; V, 115.....	189, 199, 255
Hartzell v. Saunders, 49 Mo. 433; VIII, 186.....	110
Harvey v. Rose, 26 Ark. 3; VII, 595.....	164
Harvey v. Sullens, 46 Mo. 147; II, 491.....	367
Haslem v. Lockwood, 37 Conn. 500; IX, 350.....	343
Hathaway v. Brayman, 42 N. Y. 823; I, 524.....	118, 256
Haverhill Bridge Proprietors v. County Com'rs., 108 Mass. 120; IV, 518..	101
Hawkes v. Pike, 105 Mass. 560; VII, 554.....	121
Hawkins v. Pemberton, 51 N. Y. 198; X, 595.....	813
Hawley v. Hunt, 27 Iowa, 308; I, 273.....	183
Hayden v. Merrill, 44 Vt. 386; VIII, 372.....	345
Haynes v. Nice, 100 Mass. 327; I, 109.....	112, 292, 329
Haynes v. Ritchey, 30 Iowa, 76; VI, 642.....	819
Heard v. Eldredge, 109 Mass. 258; XII, 687.....	128, 350
Heath v. Page, 68 Penn. St. 108; III, 533.....	21
Hecht v. Spears, 27 Ark. 229; XI, 784.....	353
Heckle v. Lurvey and Wife, 101 Mass. 344; III, 366.....	242
Hefner v. Vandolah, 57 Ill. 520; XI, 89.....	154
Helman v. Phoenix Mut. Life Ins. Co., 17 Minn. 153; X, 154.....	205
Hemingway v. Scales, 42 Miss. 1; II, 586.....	123, 153, 242
Henderlite v. Thurman, 23 Gratt. Va. 466; XII, 526.....	96
Henderson v. Green, 34 Iowa, 437; XI, 149.....	369
Henderson v. Staniford, 105 Mass. 504; VII, 551.....	218
Henning v. United States Ins. Co., 42 Mo. 425; IV, 332.....	185
Herrick v. Baldwin, 17 Minn. 209; X, 161.....	47, 48, 51
Herrick v. Woolverton, 41 N. Y. 581; I, 461.....	45
Herskell v. Bushnell, 37 Conn. 36; IX, 299.....	345

	PAGE.
Hewison v. City of New Haven, 87 Conn. 475; IX, 343.....	176, 267, 264
Higgins v. Dewey, 107 Mass. 494; IX, 63.....	273
Higgins v. Watervliet Turnpike and R. R. Co., 46 N. Y. 23; VII, 298 ...	247
	249
Hill v. Baker, 32 Iowa, 302; VII, 193	258
Hill Manuf. Co. v. Boston & Lowell R. R. Co., 104 Mass. 123; VI, 203 ..	70
	71, 77
Hill v. Southwick, 9 R. I. 299; XI, 250.....	304
Hill v. Spear, 50 N. H. 253; IX, 305.....	111, 314
Hill v. Wilker, 41 Ga. 449; V, 540.....	229, 334
Hills v. Place, 48 N. Y. 520; VIII, 568.....	41
Hills v. Snell, 104 Mass. 178; VI, 316.....	113, 300
Himmelmann v. Hotaling, 40 Cal 111; VI, 600.....	34
Hines & Hobbs v. Rawson, 40 Ga. 356; II, 581.....	181, 319
Hoadley v. Watson, 45 Vt. 289; XII, 197... ..	20, 143
Hobart v. Milwaukee City R. R. Co., 27 Wis. 194; IX, 461	173
Hoffman v. Armstrong, 48 N. Y. 201; VIII, 537.....	303
Hoffman v. Hoffman, 46 N. Y. 30; VII, 299.....	217, 244
Hoffman v. Union Ferry Co. of Brooklyn, 47 N. Y. 176; VII, 435.....	318
Hogan v. State, 30 Wis. 423; XI, 575.....	137
Holbrook v. Connor, 60 Me. 578; XI, 212.....	169, 253
Holcomb v. Wyckoff, 35 N. J. 35; X, 219	49
Holden v. Putnam Fire Ins. Co., 46 N. Y. 1; VII, 287.....	201, 305
Holler v. State, 37 Ind. 57; X, 74.....	133
Hollingsworth v. Germania Ins. Co., 45 Ga. 294; XII, 579	201
Hollingsworth v. Shaw, 19 Ohio St. 430; II, 411	319
Holloway v. Griffith, 32 Iowa, 409; VII, 208.....	9, 287
Holmes, Booth & Haydens v. Holmes, Booth & Atwood Manuf. Co., 37 Conn. 278; IX, 324.....	346
Holmes v. Evans, 48 Miss. 247; XII, 373.....	327
Holmes v. Trumper, 22 Mich. 427; VII, 661.....	50
Holt v. Baldwin, 46 Mo. 265; II, 515.....	285
Holt v. Barton, 42 Miss. 711; II, 640.....	115
Homan v. Stanley, 66 Penn. St. 464; V, 339.....	103, 281
Home Ins. Co. v. North Western Packet Co., 32 Iowa, 223; VII, 183.....	215
	230
Home Life Ins. Co. v. Dunn, Admr., 20 Ohio St. 175; V, 642.....	305
Homestead Cases, 22 Gratt. Va. 266; XII, 507.....	93, 163, 179
Hone, Grymes v., 49 N. Y. 17; X, 313.....	170
Hood v. Hartshorn, 100 Mass. 117; I, 89	236
Hooper v. Chicago, etc., R. Co., 27 Wis. 81; IX, 439.....	6, 73, 93
Hooper v. Welch, 43 Vt. 169; V, 267	23
Hoopes v. Strasburger, 37 Md. 390; XI, 538	291
Hoppin v. Jenckes, 8 R. I. 453; V, 597.....	19
Hoppin v. Buffum, 9 R. I. 513; XI, 291.....	126
Horn v. Cole, 51 N. H. 287; XII, 111.....	154

TABLE OF CASES REPORTED.

399

	PAGE.
Houck v. Wachter, 84 Md. 265; VI, 333.....	178
Houfe v. Town of Fulton, 29 Wis. 296; IX, 568.....	177
Hough v. Aetna Life Ins. Co., 57 Ill. 318; XI, 18.....	336
Hough v. Horsey, 36 Md. 181; XI, 484.....	350
Houghton v. Ely, 26 Wis. 181; VII, 53.....	57
Houghton v. First Nat. Bank of Elkhorn, 26 Wis. 663; VII, 107....	33, 43
Houser v. Tully, 62 Penn. St. 92; I, 890.....	181
Hovey v. Sebring, 24 Mich. 233; IX, 123.....	54
Howard v. Kimball, 65 N. C. 175; VI, 739.....	54
Howe v. Hayward, 108 Mass. 54; XI, 806.....	325
Howell v. Knickerbocker Life Ins. Co., 44 N. Y. 276; IV, 675.....	206
Howk v. Minnick, 19 Ohio St. 463; II, 413.....	10, 333
Howland v. Lounds, 51 N. Y. 604; X, 654.....	13, 309
Hoyt v. City of Saginaw, 19 Mich. 89; II, 76.....	265
Hoyt v. Holly, 39 Conn. 326; XII, 890.....	293, 314
Hoyt v. City of Hudson, 27 Wis. 656; IX, 473.....	364
Hubbard v. Bell, 54 Ill. 110; V, 98.....	365
Hubbard v. Hartford Fire Ins. Co., 33 Iowa, 325; XI, 125.....	197
Huckenstine's Appeal, 70 Penn. St. 102; X, 669.....	278
Hugunin v. Cochrane 51 Ill. 302; II, 303.....	246
Hugg, Admr., v. Baltimore, Cuba Smelting and Mining Co., 35 Md. 414; VI, 425.....	317
Hull, Sturdivant v., 59 Me. 173; VIII, 409.....	43
Hunt v. Gray, 35 N. J. 237; X, 232.....	17, 49
Hunter v. Board of Supervisors, 33 Iowa, 376; XI, 183.....	339
Hunt v. Johnson, 44 N. Y. 27; IV, 631.....	156, 217, 242
Huntley v. Whittier, 105 Mass. 391; VII, 536.....	157, 228
Huse v. Flint, 29 Iowa, 501; IV, 244.....	45
Huse v. Hamblin, 29 Iowa, 501; IV, 244.....	45
Huse v. McDaniels, 29 Iowa, 501; IV, 244.....	45
Huson v. Dale, 19 Mich. 17; II, 66.....	330
Hutchings v. Miner, 46 N. Y. 456; VII, 369.....	8, 211
Hutchinson v. Forehand, 100 Mass. 136; I, 94.....	104
Ihl v. Forty-second Street and Grand Street Ferry R. R. Co., 47 N. Y. 317; VII, 450.....	143, 275
Illinois Cent. R. R. Co. v. McClellan, 54 Ill. 58; V, 83.....	63
Illinois Cent. R. R. Co. v. Frankenberg, 54 Ill. 83; V, 93.....	71
Illinois Cent. R. R. Co. v. Slatton, 54 Ill. 133; V, 109.....	83
Illinois Cent. R. R. Co. v. Welch, 52 Ill. 183; IV, 598.....	253
Illinois Mutual Fire Ins. Co. v. Fix, 53 Ill. 151; V, 39.....	163, 196, 200
Ingalls v. Herrick, 108 Mass. 351; XI, 860.....	310
Inhabitants of Rochester v. Randall, 105 Mass. 295; VII, 519.....	283
Inhabitants of Watertown v. Mayo, 109 Mass. 315; XII, 694.....	104, 259
Inhabitants of Woburn v. Henshaw, 101 Mass. 193; III, 333.....	173, 371
In re Tarble, 25 Wis. 390; III, 85.....	221

	PAGE.
Ins. Co. of North America v. Hope, 58 Ill. 75; XI, 48.....	301
Irvine v. Wood, 51 N. Y. 224; X, 608.....	226, 271, 280
Isaacs v. Third Avenue R. R. Co., 47 N. Y. 122; VII, 418.....	249
Ives v. Booley, 35 Md. 262; VI, 411.....	41, 55
Ivey v. Lalland, 42 Miss. 444; II, 606.....	90, 111
Jackson v. Chicago and N. W. Railway Co., 31 Iowa, 176; VII, 120.....	273
Jackson v. Second Avenue R. R. Co., 47 N. Y. 274; VII, 448.....	249
Jacobs v. Allard, 42 Vt. 808; I, 881.....	362
Janes v. Jenkins, 34 Md. 1; VI, 800.....	148
Janvrin v. Town of Exeter, 48 N. H. 83; II, 185.....	8, 9, 306
Jaqua v. Montgomery, 38 Ind. 86; V, 168.....	57
Jarnigan v. Fleming, 43 Miss. 710; V, 514.....	321, 371
Jeffersonville R. R. Co. v. Rogers, 38 Ind. 116; X, 103.....	79
Jenness v. Wendell, 51 N. H. 69; XII, 48.....	24, 314, 326
Jewett v. City of New Haven, 38 Conn. 368; IX, 382.....	7, 265
J. G. v. H. G., 33 Md. 401; III, 183.....	245
Jilson v. Gilbert, 26 Wis. 637; VII, 100.....	233, 330
Johnson, admr's, v. Hedrick, 33 Ind. 129; V, 191.....	163, 215
Johnson v. Buck, 35 N. J. 338; X, 243.....	23
Johnson v. Cuttle, 105 Mass. 447; VII, 545.....	325
Johnsons v. Muzzy, 45 Vt. 419; XII, 214.....	132
Johnson v. Wells, Fargo & Co., 6 Nev. 224; III, 245.....	83, 142
Jones v. Blacklidge, 9 Kans. 562; XII, 508.....	23, 116
Jones v. Boston, 104 Mass. 75; VI, 194.....	176, 264
Jones v. Knox, 46 Ala. 53; VII, 538.....	30
Jones v. Goodwin, 39 Cal. 493; II, 473.....	41
Jones v. Jones, 36 Md. 447; XI, 505.....	236
Jones v. Wagner, 66 Penn. St. 429; V, 335.....	149, 254
Jordan v. Hanson, 49 N. H. 199; VI, 508.....	18, 224
Jordan v. Osgood, 109 Mass. 457; XII, 731.....	162, 169, 170
Judge of Probate, etc., v. Hibbard, 44 Vt. 597; VIII, 396.....	9, 173
Justice v. Lang, 42 N. Y. 493; I, 576.....	326
Kansas Pacific Railway Co. v. Nichols, 9 Kans. 285; XII, 494.....	87
Kaster v. Pierson, 27 Iowa, 90; I, 254.....	163
Kay v. Pennsylvania R. R. Co., 65 Penn. St. 269; III, 628.....	276
Keith v. Globe Ins. Co., 52 Ill. 518; IV, 624.....	190
Kellogg v. Chicago and Northwestern Railway Co., 26 Wis. 223; VII, 69, 273 274, 295	
Kellogg v. Malin, 50 Mo. 496; XI, 426.....	130
Kellogg v. Page, State Treas., 44 Vt. 356; VIII, 333.....	228
Kellogg v. Sweeney, 46 N. Y. 291; VII, 333.....	144
Kelly v. Crapo, 45 N. Y. 86; VI, 35.....	92
Kelly v. Davis, 49 N. H. 176; VI, 499.....	235
Kelly v. Riley, 106 Mass. 339; VIII, 336.....	233, 316
Kember v. Southern Express Co., 22 La. An. 158; II, 719.....	76
Kennedy v. Johnston, 65 Penn. St. 451; III, 650.....	182, 245

TABLE OF CASES REPORTED.

391

	PAGE.
Kennedy, State ex rel. v. Brunst, 26 Wis. 413; VII, 84.....	105, 283
Kentucky Farmers' Mutual Ins. Co. v. Mathers, etc., 7 Bushw. 23; III, 286, 204	
Kerr v. Forgue, 54 Ill. 483; V, 146.....	143, 181, 276
Kershaw v. Kelsey, 100 Mass. 561; I, 143.....	357
Reese v. Chicago and N. W. R. R. Co., 80 Iowa, 78; VI, 643.....	273
Killips v. Putnam Fire Ins. Co., 28 Wis. 472; IX, 506.....	201, 202
Killough v. Alvord, 82 Tex. 457; V, 249.....	55, 171, 291
Kimball v. Cushman, 108 Mass. 194; IV, 528.....	247
Kimball v. Harman, 84 Md. 407; VI, 340.....	98
Kimball v. Myers, 21 Mich. 276; IV, 487.....	161, 254
Kimm v. Weippert, 46 Mo. 532; II, 541.....	160, 289, 240, 241
Kincaid's Appeal, 66 Penn. St. 411; V, 377.....	88, 104, 150
King v. Hunter, 65 N. C. 603; VI, 754.....	105
Kingsbury v. Burnside, 53 Ill. 310; XI, 67.....	121, 248
Kinney v. Central R. R. Co. of N. J., 34 N. J. 513; III, 265.....	83
Kinyon v. Wohlford, 17 Minn. 239; X, 165.....	53
Kinnier v. Kinnier, 45 N. Y. 535; VI, 132.....	217, 243
Kirkland v. Naramore, 105 Mass. 81; VII, 497.....	369
Kleine, Hegger & Co. v. Katzenberger & Co., 20 Ohio St. 110; V, 630....	256
Klinck v. Price, 4 W. Va. 4; VI, 268.....	123, 229, 255, 351
Klink v. Colby, 46 N. Y. 427; VII, 390.....	320
Klumph v. Dunn, 66 Penn. St. 141; V, 355.....	319, 321
Knight, adm'r, v. Clements et al., Ex'rs, 45 Ala. 89; VI, 693.....	52, 232
Knight v. Goodyear's India Rubber Glove Manuf. Co., 38 Conn. 438; IX, 406.....	179, 279
Knorr v. Home Ins. Co. of New York, 25 Wis. 143; III, 26.....	186, 306
Rowing v. Manley, 49 N. Y. 192; X, 346.....	24, 237
Knowlton v. Erie Railway Co., 19 Ohio St. 260; II, 395.....	83, 111
Kounts v. Kennedy, 63 Penn. St. 187; III, 541.....	50
Krudler v. Ellison, 47 N. Y. 86; VII, 403.....	6, 93, 311
Kurts v. Hibner, 50 Ill. 514; VIII, 665.....	160, 322
Kyle v. Kavanaugh, 103 Mass. 356; IV, 560.....	120, 254, 353
Ladd v. Hilderbrand, 27 Wis. 185; IX, 445.....	302
Lake v. Reed, 29 Iowa, 258; IV, 209.....	43
Lake Shore and Mich. So. R. R. Co. v. Perkins, 25 Mich. 329; XII, 275..	87
Lalor v. Chicago, Burlington & Quincy R. R. Co., 53 Ill. 401; IV, 616....	250
Lamar Ins. Co. v. McGlashen, 54 Ill. 513; V, 163.....	213
Lamb v. Camden & Amboy R. R. & Transp. Co., 46 N. Y. 371; VII, 327..	65
	74
Lamb v. Danforth, 59 Me. 323; VIII, 496.....	120, 182, 344
Lambeth v. North Carolina R. R. Co., 66 N. C. 494; VIII, 508.....	82
Lancaster Nat. Bank v. Taylor, 100 Mass. 18; I, 71.....	46
Laning v. New York Cent. R. R. Co., 49 N. Y. 521; X, 417.....	250
Lantry v. Lantry, 51 Ill. 453; II, 310.....	330
Larned v. Andrews, 106 Mass. 435; VIII, 346.....	315
Lash v. Lambert, 15 Minn. 416; II, 143.....	309

	PAGE.
Laughlin v. Chicago & Northwestern Railway Co., 26 Wis. 204; IX, 498..	73
Laverone v. Mangianti, 41 Cal. 138; X, 269.....	17
Lawrence v. Hagerman, 56 Ill. 68; VIII, 674.....	285
Lawrence v. Winona & St. Peter R. R. Co., 15 Minn. 390; II, 130....	68
Lawson v. Jeffries, 47 Miss. 686; XII, 342.....	93, 97, 228, 278
Lawson v. Miller, 44 Ala. 616; IV, 147.....	45, 91, 92
Leach v. Hale, 81 Iowa, 69; VII, 112.....	86, 158, 224
Lee v. Murphy, 22 Gratt. 789; XII, 563.....	286
Lee v. Pembroke Iron Co., 57 Me. 481; II, 59.....	100, 361
Lee v. State, 26 Ark. 260; VII, 611.....	135
Lefever's Appeal, 69 Penn. St. 122; VIII, 229.....	288, 289
Leiman, Matter of, 82 Md. 225; III, 132.....	138, 232, 352
Lemcke v. Booth, 47 Mo. 385; IV, 326.....	26
Lemons v. State, 4 W. Va. 755; VI, 293.....	184, 371
Leonard v. N. Y., Alb. & Buff. Electro-Magnetic Telegraph Co., 41 N. Y. 544; I, 446.....	340, 342
Leonard v. Putnam, 51 N. H. 247; XII, 106.....	163, 173, 223
Lester and Wife v. Howard Bank, 33 Md. 558; III, 211.....	82, 118
Lewis v. Brehme, 33 Md. 412; III, 190.....	16
Lindeman v. Lindsey, 69 Penn. St. 93; VIII, 219.....	363
Lippencott v. Allander, 27 Iowa, 460; I, 299.....	164
Lipscomb v. Grace, 26 Ark. 231; VII, 607.....	26
Little Miami R. R. Co. v. Wetmore, 19 Ohio St. 110; II, 378.....	249
Livezey v. Philadelphia, 64 Penn. St. 106; III, 578... 4, 10, 21, 144, 147, 173	
Lockwood v. Mechanics' Nat. Bank, 9 R. I. 308; XI, 253.....	36
Lockwood v. N. Y. Cent. R. R. Co., in note, U. S. Sup. Ct., X, 366.....	86
Look v. Dean, 108 Mass. 116; XI, 323.....	19, 183
Loop v. Litchfield, 42 N. Y. 351; I, 548.....	7, 269
Lord v. Town of Litchfield, 86 Conn. 116; IV, 41.....	98, 109, 339
Lorillard Fire Ins. Co. v. McCulloch, 21 Ohio St. 176; VIII, 52.....	193
Losee v. Buchanan, 51 N. Y. 476; X, 623.....	10, 269, 279
Losee v. Clute, 51 N. Y. 494; X, 638....	7, 269
Loughran v. Ross, 45 N. Y. 792; VI, 173.....	226
Louisiana State Lottery v. Richoux, 23 La. Ann. 748; VIII, 602..	160, 330, 331
Louisville & Nashville R. R. Co. v. Buckner, 8 Bush. 277; VIII, 463....	356
Love v. Watkins, 40 Cal. 547; VI, 624.....	228, 243
Low v. Pew, 108 Mass. 347; XI, 357.....	314
Lowry v. Howard, 35 Ind. 170; IX, 676.....	121
Luce v. Dorchester Mut. Fire Ins. Co., 105 Mass. 297; VII, 532.....	193, 196
Ludwig v. The Jersey City Ins. Co., 48 N. Y. 879; VIII, 556.....	194
Lungstrass v. German Ins. Co., 48 Mo. 201; VIII, 100.....	190
Luske v. Hotchkiss, 37 Conn. 219; IX, 814.....	113
Lynch v. Smith, 104 Mass. 52; VI, 188.....	275
Mack v. Patchin, 42 N. Y. 167; I, 506.....	146, 234
Macomber v. Gadfrey, 108 Mass. 219; XI, 349.....	363
Madigan v. McCarthy, 108 Mass. 376; XI, 371.....	167

TABLE OF CASES REPORTED.

393

	PAGE.
Maghee v. Camden & Amboy R. R. Co., 45 N. Y. 514; VI, 124.....	66
Magrath v. Magrath, 108 Mass. 577; IV, 579.....	245
Magruder & Brother v. Gage, 83 Md. 344; III, 177.....	62, 811
Malloney v. Horan, 49 N. Y. 111; X, 385.....	154, 246
Mallory v. Travelers' Ins. Co., 47 N. Y. 53; VII, 410.....	186, 207, 208
Maltbie v. Hotchkiss, 38 Conn. 80; IX, 864.....	183
Manderschid v. City of Dubuque, 29 Iowa, 78; IV, 196.....	261
Mangum v. Ball, 48 Miss. 288; V, 488.....	13
Manhattan Brass and Manuf. Co. v. Sears, 45 N. Y. 797; VI, 177.....	286
Manhattan Life Ins. Co. v. Warwick, 20 Gratt. Va. 614; III, 218.....	13, 209
Manning v. Keyes, 9 R. I. 224; XI, 249.....	26
Maples v. N. Y. & N. Haven R. R. Co., 38 Conn. 557; IX, 484.....	80
Maroney v. Old Colony & Newport Railway Co., 106 Mass. 153; VIII, 805	801
Marsh v. Hall, 9 R. I. 218; XI, 245.....	25
Marshall v. Cohen, 44 Ga. 489; IX, 170.....	226, 271, 280
Marshall v. Meech, 51 N. Y. 140; X, 572.....	23
Marshall v. Roberts, 18 Minn. 405; X, 201.....	123
Marsh's Appeal, 69 Penn. St. 30; VIII, 206.....	288
Martin v. Clarke, 8 R. I. 389; V, 586.....	22, 88, 116, 159
Martin, Ex Parte, 7 Nev. 140; VIII, 707.....	96
Marvin v. Treat, 87 Conn. 96; IX, 807.....	4, 12, 307
Marx v. Fore, 51 Mo. 69; XI, 432.....	217
Maryland Fire Ins. Co. v. Whiteford, 81 Md. 219; I, 45.....	196
Maspero v. Pedesciaux, 22 La. An. 227; II, 727.....	48
Mathews v. Kelsey, 58 Me. 56; IV, 248.....	179
Matter of Conner, 39 Cal. 98; II, 437.....	221
Matter of Insolvent Estate of Leiman, 33 Md. 225; III, 182....	183, 232, 352
Matter of Petition of N. Y. & Harlem R. R. Co. v. Kip, 46 N. Y. 546; VII,	385.....
	296
Matter of Reynolds, 8 R. I. 485; V, 615.....	25, 183
Matter of Will of Fox, 52 N. Y. 580; XI, 751.....	368, 369
Matthewson v. Perry, 87 Conn. 435; IX, 339.....	285
Mauran, Adj.-Gen. v. Smith, governor of R. I., 8 R. I. 192; V, 564..	172, 235
May v. Buckeye Mutual Ins. Co., 25 Wis. 291; III, 76.....	190
May v. Rice, 108 Mass. 150; XI, 328.....	227
Mayer v. Mordecai, 1 S. C., N. S., 383; VII, 26....	349
Mayfield v. Moore, 53 Ill. 428; V, 52.....	283
Mayor, etc., of Annapolis v. Harwood, 32 Md. 471; III, 161.....	160, 330
Mays v. Manufacturers' Nat. Bank, 64 Penn. St. 74; III, 573....	39
McAllister v. New England Mutual Life Ins. Co., 101 Mass. 558; III, 404..	205
McAndrew v. Whitlock, 52 N. Y. 40; XI, 657.....	69
McArthur v. Schenck, 31 Wis. 678; XI, 643.....	315
McClary v. Lowell, 44 Vt. 116; VIII, 366.....	333
McClave v. Paine, 49 N. Y. 561; X, 431.....	60
McClure v. Philadelphia, Wilmington & Baltimore R. R. Co., 34 Md. 532;	
VI, 345.....	80

	PAGE.
McCormick et al. v. Sarson, 45 N. Y. 265; VI, 80.....	159
McCoy v. Cal. Pacific R. R. Co., 40 Cal. 532; VI, 623.....	272
McCready v. Sexton & Son, 29 Iowa, 856; IV, 214.....	100, 240
McCreery v. Claffin, 87 Md. 485; XI, 542.....	147
McCusker v. McEvey, 9 R. I. 528; XI, 295.....	154
McElvain v. Mudd, 44 Ala. 48; IV, 106.....	45, 322, 324
McEntee v. New Jersey Steamboat Co., 45 N. Y. 84; VI, 28.....	66
McEwen v. Jeffersonville, Madison & Indianapolis R. R. Co., 88 Ind. 868; V, 216.....	67
McGary v. Hastings, 39 Cal. 360; II, 456.....	180, 146
McGoon v. Shirk, 54 Ill. 408; V, 122.....	55, 171, 345
McGovern v. Knox, 21 Ohio St. 547; VIII, 80.....	241
McGuire v. Stevens, 42 Miss. 724; II, 649.....	326
McHugh v. County of Schuylkill, 67 Penn. St. 391; V, 445.....	168, 302
McIndoe v. Morman, 26 Wis. 588; VII, 96.....	354
McIntire v. Norwich Ins. Co., 102 Mass. 230; III, 458.....	199
McKee v. Garcelon, 60 Me. 165; XI, 200.....	243, 811
McKeon v. See, 51 N. Y. 800; X, 659.....	280
McKibbin v. Martin, 64 Penn. St. 352; III, 588.....	312
McKinzie v. Hill, 51 Mo. 808; XI, 450.....	231
McKnight v. Devlin, 52 N. Y. 899; XI, 715.....	252
McLaren & Co. v. Kehler, 23 La. An. 80; VIII, 591.....	217
McLaughlin, Ex parte, 41 Cal. 211; X, 272.....	135
McLean v. Bovee, 24 Wis. 295; I, 185.....	150, 151, 303
McLellan v. Jenness, 43 Vt. 183; V, 270.....	344
McLeod v. Jones, 105 Mass. 403; VII, 539.....	815
McLeon v. Commercial Mutual Ins. Co., 100 Mass. 473; I, 129.....	185, 214
McMartin v. Bingham, 27 Iowa, 284; I, 265.....	304, 348
McMasters v. Pennsylvania R. R. Co., 69 Penn. St. 374; VIII, 264... 62, 67	
McMillan v. Bull's Head Bank, 83 Ind. 11; II, 828.....	335, 337
McNaught v. McClaughry, 42 N. Y. 22; I, 487.....	44
McNeil v. Tenth Nat. Bank, 46 N. Y. 825; VII, 841.....	24
McPadden v. New York Cent. R. R. Co., 44 N. Y. 478; IV, 705.. 81, 301, 302	
Meadow Valley Mining Co. v. Dodds, 7 Nev. 143; VIII, 709.....	305
Means v. Swormstedt, 32 Ind. 87; II, 830.....	15, 43
Meara's Admr. v. Holbrook & Roosevelt, Receivers, 20 Ohio St. 187; V, 638.....	251
Meier v. Pennsylvania R. R. Co., 64 Penn. St. 225; III, 581.....	81
Meigs' Appeal, 62 Penn. St. 28; I, 872.....	166
Melly v. Wood, 71 Penn. St. 488; X, 719.....	286
Melswinkle v. Jung, 30 Wis. 361; XI, 572.....	44
Melchoir v. McCarty, 31 Wis. 252; XI, 605.....	5, 335
Meley v. Collins, 41 Cal. 668; X, 279.....	154
Melhop v. Doane, 31 Iowa, 397; VII, 147.....	218
Memphis & Charleston R. R. Co. v. Whitefield, 44 Miss. 466; VII, 699... 82	
Menagh v. Whitwell, 52 N. Y. 146; XI, 688.....	286

TABLE OF CASES REPORTED.

395

	PAGE.
Meriden Britannia Co. v. Parker, 39 Conn. 450; XII, 401.....	846
Meriden Britannia Co. v. Zingsen, 48 N. Y. 247; VIII, 549.....	829
Merrill v. New England Mutual Life Ins. Co., 103 Mass. 245; IV, 548...	311
Merritt v. Glidden, 39 Cal. 559; II, 479.....	30
Merwin v. People, 26 Mich. 298; XII, 814.....	184
Metallic Compression Casting Co. v. Fitchburg R. R. Co., 109 Mass. 277; XII, 682.....	165, 272, 295
Myer v. Chicago & Northwestern Railway Co., 24 Wis. 566; I, 207.....	70
Michael v. Bacon, 49 Mo. 474; VIII, 188.....	115
Michigan South., etc., R. R. Co. v. McDonough, 21 Mich. 165; IV, 466..	87
Michigan South. & North. Indiana R. R. Co. v. Heaton, 87 Ind. 448; X, 89.	65
Middlebrook v. Broadbents, 47 N. Y. 448; VII, 457.....	220, 290
Migatt v. Wilcox, 45 N. Y. 806; VI, 90.....	22, 163
Miller v. Brown, 47 Mo. 504; IV, 845.....	240
Miller v. Burch, 32 Tex. 208; V, 242.....	258, 281
Miller v. Lea & Co., 35 Ind. 896; VI, 417.....	15
Miller v. Finley, 26 Mich. 249; XII, 806.....	43, 46, 50, 55
Miller v. Hays, 34 Iowa, 496; XI, 154.....	238
Miller v. Mayor, etc., of Mobile, 47 Ala. 163; XI, 768.....	263
Miller v. The Mut. Benef. Life Ins. Co., 31 Iowa, 216; VII, 123.....	184, 206
Miller v. The People, 52 N. Y. 304; XI, 706.....	185, 323
Miller v. Phoenix Ins. Co., 27 Iowa, 203; I, 262.....	184
Miller v. Stevens, 100 Mass. 509; I, 189.....	158
Miller v. Woods, 21 Ohio St. 485; VIII, 71.....	57
Mills v. Charleton Co. Treasurer, 29 Wis. 400; IX, 578.....	96, 106, 331
Mills v. Michigan Cent. R. R. Co., 45 N. Y. 622; VI, 153.....	73
Milwaukee Iron Co. v. Schubel, 29 Wis. 444; IX, 591.....	68
Mins v. Armstrong, 31 Md. 87; I, 22.....	21
Miner v. The Phoenix Ins. Co., 27 Wis. 693; XI, 479....	200
Mishler v. Commonwealth, 63 Penn. St. 55; I, 877.....	19
Mississippi Society of Arts and Sciences v. Musgrove, 44 Miss. 830; VII, 738.....	98, 234
Mississippi & Tennessee R. R. Co. v. Devaney, 42 Miss. 555; II, 606, 296, 347	
Mobile & Girard R. R. Co. v. Prewitt, 46 Ala. 68; VII, 586.....	70
Mollison v. Eaton, 16 Minn. 426; X, 150.....	27
Montgomery Co. v. Elston, 32 Ind. 27; II, 327.....	88
Montgomery v. Kellogg, 43 Miss. 486; V, 508.....	172
Monument Nat. Bank v. Globe Works, 101 Mass. 57; III, 322.....	43, 128
Moore v. Davis, 49 N. H. 45; VI, 460.....	12, 110, 145, 158, 223
Moore v. Moore, 47 N. Y. 467; VII, 466.....	323
Moore v. Quirk, 105 Mass. 49; VII, 499.....	323
Moore v. State, 48 Miss. 147; XII, 367.....	99, 224
Moore v. Weber, 71 Penn. St. 429; X, 708.....	224, 235
More v. Bonnet, 40 Cal. 251; VI, 621.....	117
Morrill v. Mackman, 24 Mich. 279; IX, 124.....	225
Morris v. Faurot, 31 Ohio St. 155; VIII, 45.....	53

	PAGE.
Morris v. McMorris, 44 Miss. 441; VII, 695.....	324
Morris Run Coal Co. v. Barclay Coal Co., 68 Penn. St. 178; VIII, 159....	114
Morse v. Buffalo Fire and Marine Ins. Co., 80 Wis. 584; XI, 587.....	196
Morse v. Home Ins. Co., 80 Wis. 496; XI, 580.....	186, 307
Morse Twist Drill and Machine Co. v. Morse, 103 Mass. 72; IV, 518.....	117
Morton v. Mut. Life Ins. Co. of N. Y., 105 Mass. 141; VII, 505.....	186, 306
Morton v. Noble, 57 Ill. 176; XI, 7.....	246
Moseley v. Tuthill, 45 Ala. 621; VI, 710.....	91, 357, 368
Moses v. Trice, 21 Gratt. 556; VIII, 609.....	12, 56, 59, 291
Moss v. Culver, 64 Penn. St. 414; III, 601.....	327
Moss v. Pacific R. R. Co., 49 Mo. 167; VIII, 126.....	251
Mote v. Chicago and Northwestern R. R. Co., 27 Iowa, 23; I, 212..	62, 85, 215
Mousler and Wife v. Harding, 33 Ind. 176; V, 195.....	237, 319, 320, 373
Mullen v. State, 45 Ala. 48; VI, 691.....	133, 137
Mullen v. Stricker, 19 Ohio, 135; II, 379.....	143
Mundorff v. Wickersham, 63 Penn. St. 87; III, 531.....	14
Munson v. Mallory, 36 Conn. 165; IV, 53.....	174
Munson v. Town of Derby, 37 Conn. 298; IX, 332.....	178
Murphy and Wife v. Deane, 101 Mass. 455; III, 390.....	275
Murrell v. The State, 46 Ala. 89; VII, 592.....	134, 153, 162
Musselman's Appeal, 62 Pa. 81; I, 382.....	268
Mussina v. Goldthwaite, 34 Tex. 125; VII, 281.....	126
Myers v. Meinrath, 101 Mass. 366; III, 368.....	334
Nash v. Lull, 102 Mass. 60; III, 435.....	46, 290
Nashua Lock Co. v. Western and Nashua R. R. Co., 48 N. H. 339; II, 242,	73
Nat'l Bank of North America v. Bangs, 106 Mass. 441; VIII, 349.....	35
Nat'l Exchange Bank v. Hartford, Providence & Fishkill R. R. Co., 8 R. I.	
875; V, 582.....	59
Nat'l Park Bank of N. Y. v. Fourth Nat'l Bank of N. Y., 46 N. Y. 77; VII,	
310.....	35, 58
Nat'l Park Bank of N. Y. v. Ninth Nat'l Bank of N. Y., 46 N. Y. 77; VII,	
310.....	35, 58
Nat'l Pemberton Bank v. Lougee, 108 Mass. 371; XI, 367.....	44
Neff v. Horner, 63 Penn. St. 327; III, 555.....	50
Negley v. Lindsay, 67 Penn. St. 217; V, 427.....	110, 123, 302, 353
Newcomb v. Cincinnati Ins. Co., 23 Ohio St. 332; X, 746.....	315
New England Express Co. v. Maine Cent. R. R. Co., 57 Maine, 188; II, 31,	61
Newhall and Wife v. Lynn Five Cents Savings Bank, 101 Mass. 428; III,	
387.....	246
New Haven, City of, v. Fair Haven and Westfield R. R. Co., 38 Conn. 423;	
IX, 399.....	266
New Haven, City of, v. Hewison, 37 Conn. 475; IX, 342.....	264
New Haven, City of, v. Sargent, 33 Conn. 50; IX, 360.....	174, 263
Newman v. Alvord, 51 N. Y. 189; X, 588.....	346
New Orleans, Jackson and Great Northern R. R. Co. v. Harrison, 48 Miss.	
112; XII, 356.....	253

TABLE OF CASES REPORTED.

397

	PAGE.
<i>Newsom v. Cocke</i> , 44 Miss. 352; VII, 686.....	105, 384
<i>Newton v. Bushong</i> , 22 Gratt. 68; XII, 558.....	356
<i>Newton v. Howe and Drury</i> , 29 Wis. 581; IX, 616.....	344
<i>New York & Harlem R. R. Co. v. Kip</i> , 46 N. Y. 546; VII, 385.....	296
<i>New York Life Ins. Co. v. Clopton</i> , 7 Bush. Ky. 179; III, 290.....	209
<i>Noonan v. Kemp</i> , 84 Md. 73; VI, 807.....	229
<i>Norris v. Blair</i> , 89 Ind. 90; X, 185.....	24
<i>North American Fire Ins. Co. v. Throop</i> , 23 Mich. 146; VII, 688.....	189, 191 195
<i>North American Life and Accident Ins. Co. v. Burroughs</i> , 69 Penn. St. 48; VIII, 212.....	186
<i>North Missouri R. R. Co. v. Maguire</i> , 49 Mo. 490; VIII, 141.....	102
<i>Northrup v. The Mississippi Valley Ins. Co.</i> , 47 Mo. 484; IV, 387.....	189
<i>Northrup v. Railway Passenger Assurance Co.</i> , 43 N. Y. 516; III, 725.....	186
<i>North Yarmouth v. West Gardiner</i> , 58 Me. 207; IV, 279.....	216
<i>Norton v. Phoenix Mutual Life Ins. Co.</i> , 86 Conn. 508; IV, 98.....	205
<i>Norton v. Sewell</i> , 106 Mass. 148; VIII, 298.....	6, 269
<i>Norvell v. Deval</i> , 50 Mo. 272; XI, 413.....	224
<i>Norwich Fire Ins. Co. v. Broomer</i> , 52 Ill. 442; IV, 618.....	193
<i>Oberndorf v. Union Bank of Baltimore</i> , 81 Md. 126; I, 81.....	89, 292, 336
<i>O'Brien and wife v. Barry</i> , 106 Mass. 800; VIII, 329.....	9, 234
<i>O'Brien v. Mayor of Savannah</i> , 41 Ga. 331; V, 582.....	91, 338, 339
<i>Oddie v. Nat. City Bank of N. Y.</i> , 45 N. Y. 735; VI, 160.....	80
<i>Odione v. New England Marine Ins. Co.</i> , 101 Mass. 551; III, 401.....	212
<i>Ogden v. East River Ins. Co.</i> , 50 N. Y. 888; X, 492.....	208
<i>O'Hara v. Carpenter</i> , 23 Mich. 410; IX, 89.....	45
<i>Oliver v. Worcester</i> , 102 Mass. 489; III, 485.....	261
<i>Osborn v. Hart</i> , 24 Wis. 89; I, 161.....	102, 162, 294
<i>Ott v. Rape</i> , 24 Wis. 836; I, 186.....	100
<i>Ottumwa Lodge v. Lewis</i> , 84 Iowa, 67; XI, 185.....	8, 149, 303
<i>Pacific Mutual Ins. Co. v. Guse</i> , 49 Mo. 329; VIII, 132.....	204
<i>Page v. Dickerson</i> , 28 Wis. 694; IX, 583.....	221, 290
<i>Page v. Fowler</i> , 86 Cal. 412; II, 462.....	144, 150, 152, 303
<i>Pahquioque Bank v. Bethel Bank</i> , 86 Conn. 325; IV, 80.....	33, 36
<i>Palairot's Appeal</i> , 67 Penn. St. 479; V, 450.....	101
<i>Palfrey v. City of Boston</i> , 101 Mass. 329; III, 364.....	324, 338
<i>Palmer v. DeWitt</i> , 47 N. Y. 532; VII, 480.....	125
<i>Palmer v. Holland</i> , 51 N. Y. 416; X, 616.....	77
<i>Palmer v. Preston</i> , 45 Vt. 154; XII, 191.....	26
<i>Park Bank v. Watson</i> , 42 N. Y. 490; I, 573.....	48
<i>Parker v. Canfield</i> , 87 Conn. 250; IX, 817.....	286
<i>Parker v. Foy & Florer</i> , 48 Miss. 260; V, 484.....	122, 354
<i>Parker v. Latner</i> , 60 Me. 528; XI, 210.....	334
<i>Parkhurst v. Gloucester Mutual Fishing Ins. Co.</i> , 100 Mass. 301; I, 105.....	212
<i>Parks v. Sheldon</i> , 86 Conn. 466; IV, 95.....	27
<i>Parmelee v. Thompson</i> , 45 N. Y. 58; VI, 38.....	55

	PAGE.
Parsons v. Loucks, 48 N. Y. 17; VIII, 517.....	325
Passenger R. R. Co. v. Young, 21 Ohio St. 518; VIII, 78.....	248
Pattison v. Culton, 33 Ind. 240; V, 199.....	333
Paull v. Halferty, 63 Penn. St. 46; III, 518.....	11, 323
Payne v. Able, 7 Bush. 344; III, 816.....	26, 29, 336
Peerce v. Carskadon, 4 W. Va. 234; VI, 261.....	109, 357
Penn, Jr. v. Buffalo & Erie R. R. Co., 49 N. Y. 204; X, 855.....	87
Pennsylvania and Ohio Canal Co. v. Graham, 63 Penn. St. 290; III, 549..	142
	178, 281
Pennsylvania R. R. Co. v. Kerr, 62 Penn. St. 353; I, 431.....	10, 274, 295
Pennsylvania R. R. Co. v. Riblet, 66 Penn. St. 164; V, 360.....	104, 299
People ex rel. Hedgman v. Board of Registration, 26 Mich. 51; XII, 297..	150
People ex rel. Fowler v. Bull, 46 N. Y. 57; VII, 303.....	105, 283
People ex rel. Hempstead v. Chicago & Alton R. R. Co., 55 Ill. 95; VIII,	
631.....	68
People ex rel. Furman v. Clute, 50 N. Y. 451; X, 508.....	151
People ex rel. Barlow, Attorney-General, v. Curtis, 50 N. Y. 321; X, 433.	164
People v. Dawell, 25 Mich. 247; XII, 260.....	217, 244
People v. Harrington, 42 Cal. 165; X, 296.....	137
People ex rel. Trombley v. Humphrey, Auditor-General, 23 Mich. 471;	
IX, 194.....	101
People v. Nichols, 52 N. Y. 478; IX, 734.....	89
People v. Brady, 40 Cal. 198; VI, 604.....	95
People ex rel. Le Roy v. Hurlbut, 24 Mich. 44; IX, 103.....	105, 283
People ex rel. Glens Falls Ins. Co. v. Judge of Jackson Circuit, 21 Mich.	
577; IV, 504.....	186, 306
People ex rel. McCagg v. Mayor, etc., of Chicago, 51 Ill. 17; II, 278.....	258
People ex rel. Benoit v. Miller, 24 Mich. 458; IX, 181.....	283
People ex rel. Washington v. Nichols, 52 N. Y. 478; XI, 734.....	108, 283
People v. Schryver, 42 N. Y. 1; I, 480.....	139
People of The State of California v. Brady, 40 Cal. 198; VI, 604.....	95
People ex rel. Detroit and Howell R. R. Co. v. Town of Salem, 20 Mich.	
452; IV, 400.....	103, 267, 340
People ex rel. O'Connell v. Turner, 55 Ill. 280; VIII, 645.....	103, 180, 285
People v. Williams, 24 Mich. 156; IX, 119.....	107, 140
People's Bank of Baltimore v. Brooke, 31 Md. 7; I, 11.....	47
Perkins v. Lockwood, 100 Mass. 249; I, 103.....	90
Perkins v. Rogers, 35 Ind. 124; IX, 639.....	231
Perkins, Treas. v. Corbin, Judge, etc., 45 Ala. 103; VI, 698.....	105
Peterson v. Sentman, 37 Md. 140; XI, 534.....	319
Petition of McCormick, 24 Wis. 492; I, 197.....	138
Pettigrew v. Village of Evansville, 25 Wis. 223; III, 50.....	258, 364
Phelan v. Moss, 37 Penn. 59; V, 402.....	43
Phelps v. Northup, 56 Ill. 156; VIII, 681.....	3
Phelps v. Vischer, 50 N. Y. 69; X, 433.....	41, 194
Phifer v. Cox, 21 Ohio St. 243; VIII, 58.....	174

TABLE OF CASES REPORTED.

399

PAGE.

Philadelphia, Wilmington & Baltimore R. R. Co. v. Woelpper, 64 Penn. St. 366; III, 596	256, 299
Phillips v. Dugan, 21 Ohio St. 466; VIII, 66	171
Phillips v. Graves and Wife, 20 Ohio St. 871; V, 675	240, 241
Pickens v. Diecker, 21 Ohio St. 212; VIII, 55	248
Pickett v. School District No. 1, Town of Wiota, etc., 25 Wis. 551; III, 105	118, 283
Pidcock v. Potter, 68 Penn. St. 342; VIII, 181	182, 161, 366
Pierce v. Dyer, 109 Mass. 374; XII, 716	8, 148, 303
Pierce v. George, 108 Mass. 78; XI, 310	166
Pierce v. Milwaukee & St. Paul R. R. Co., 24 Wis. 551; I, 203	299
Pierce v. Nashua Ins. Co., 50 N. H. 297; IX, 235	190, 200
Pitkin v. Noyes, 48 N. H. 294; II, 218	89, 92, 110, 325
Pittock v. O'Neill, 68 Penn. St. 253; III, 544	321
Pittsburg, Fort Wayne & Chicago Railway Co. v. Commonwealth, 66 Penn. St. 73; V, 344	338
Pittsburg, Fort Wayne & Chicago Railway Co. v. Ruby, 88 Ind. 294; X, 111	366
Plimpton v. Farmers' Mutual Ins. Co., 43 Vt. 497; V, 297	163, 203
Pool v. Lewis, 41 Ga. 162; V, 526	153, 362
Poorman v. Mills, 89 Cal. 345; II, 551	35, 39
Port v. Russell, 36 Ind. 60; X, 5	127, 350
Porterfield v. Butler, 47 Miss. 165; XII, 329	93, 241
Poucher v. N. Y. Cent. R. R. Co., 49 N. Y. 263; X, 364	86
Pratt v. Chase, 44 N. Y. 597; IV, 718	133
Prell v. McDonald, 7 Kans. 426; XII, 423	156, 217, 257
Prescott v. Locke, 51 N. H. 94; XII, 55	162, 309, 310, 325
Prescott v. The State, 19 Ohio St. 184; II, 388	103, 348
Price v. Hartshorn, 44 N. Y. 94; IV, 645	317
Price v. Oswego and Syracuse Railway Co., 50 N. Y. 213; X, 475	67
Price v. Phoenix Mut. Life Ins. Co., 17 Minn. 497; X, 166	6, 206, 207 212, 293
Proctor v. Jennings, 6 Nev. 83; III, 240	361
Proprietors of Locks and Canals on Merrimack river v. Nashua and Lowell R. R. Co., 104 Mass. 1; VI, 181	146, 296
Providence Institution for Savings and Jewell v. City of Boston, 101 Mass. 575; III, 407	96, 338
Prutsman v. Baker, 30 Wis. 644; XI, 593	121
Purdy v. Huntington, 42 N. Y. 884; I, 532	20, 255
Putnam v. Bond, 100 Mass. 58; I, 83	59, 123, 159
Putnam v. Farnham, 27 Wis. 187; IX, 459	328
Quinn v. Hard, 43 Vt. 875; V, 284	49
Quinn v. The State, 35 Ind. 485; IX, 754	140
Rainbolt v. Eddy, 34 Iowa, 440; XI, 152	50
Ramaley v. Leland, 43 N. Y. 539; III, 728	182
Ramsden v. Boston and Albany R. R. Co., 104 Mass. 117; VI, 200	80
Rand v. North Carolina, 65 N. C. 194; VI, 741	91

	PAGE.
Randall v. Elwell, 52 N. Y. 521; XI, 747.....	167, 300
Randall v. Kehler, 60 Me. 37; XI, 169.....	103, 348
Randall and Wife v. Eastern R. R. Co., 106 Mass. 276; VIII, 327..	258
Ransom v. Boal, 29 Iowa, 68; IV, 195.....	258
Rapho and West Hempfield Townships v. Moore, 68 Penn. St. 404; VIII, 202.....	175, 262
Rawson v. Pennsylvania R. R. Co., 48 N. Y. 212; VIII, 543.....	65, 85, 238
Ray v. Adden, 50 N. H. 82; IX, 175.....	7, 239
Reaper City Ins. Co. v. Brennan, 58 Ill. 158; XI, 54.....	195
Redmond v. Liverpool, N. Y. & Philadelphia Steamboat Co., 46 N. Y. 578; VII, 890.....	69, 70
Reed v. Taylor, 82 Iowa, 209; VII, 180.....	25, 183
Reed v. United States Express Co., 48 N. Y. 463; VIII, 561.....	76
Rees v. Jackson, 64 Penn. St. 486; III, 608.....	161
Reid v. Eatonton Manuf. Co., 40 Ga. 98; II, 563.....	128
Requa, admx. v. City of Rochester, 45 N. Y. 129; VI, 52... 173, 174, 175,	261
Reynolds, Matter of, 8 R. I. 490; V, 615.....	25, 183
Reynolds v. Mutual Fire Ins. Co. of Cecil County, 34 Md. 290; VI, 837..	187
Rheinstrom v. Cone, 26 Wis. 163; VII, 48.....	323
Rhines' Admrs. v. Evans, 66 Penn. St. 192; V, 864.....	233
Rhoades v. Blackiston, 106 Mass. 334; VIII, 332.....	27
Rice v. Bunce, 49 Mo. 281; VIII, 129.....	154
Rice v. Roberts, 24 Wis. 461; I, 195.....	303, 326
Rice v. Shook, 27 Ark. 137; XI, 783.....	358
Rice v. Thayer, 105 Mass. 258; VII, 516.....	216
Richards v. Jackson, 31 Md. 250; V, 49... ..	60
Richardson v. Borden, 42 Miss. 71; II, 595.....	167
Richardson v. Rich, 104 Mass. 156; VI, 210.....	68
Ricker v. Freeman, 50 N. H. 430; IX, 267.	13
Riley v. Whittiker, 49 N. H. 145; VI, 474.....	153
Ritchie v. Sweet, 32 Tex. 333; V, 245.....	91, 292
Rittenhouse v. Independent Line of Telegraph, 44 N. Y. 263; IV, 673....	343
	343
Roach v. Gunter, 44 Ala. 209; IV, 132.....	99, 322
Robb v. McDonald, 29 Iowa, 330; IV, 211.....	108, 173
Robbins v. Bunn, 54 Ill. 48; V, 75.....	294
Robbins v. Cheek, 32 Ind. 328; II, 848.....	56
Roberts v. Fisher, 48 N. Y. 159; III, 680.....	296
Roberts v. Hall, 37 Conn. 205; IX, 308.....	54
Robinson v. Barbour, 42 Miss. 797; II, 671.....	112, 130, 302
Robinson v. International Life Assurance Society of London, 42 N. Y. 54; I, 490.....	13, 208
Rodgers v. Burchard, 34 Tex. 441; VII, 233.....	123
Rogers v. Carey, 47 Mo. 232; IV, 322.....	121
Rogers v. Inhabitants of Greenbush, 58 Me. 390; IV, 292.....	11, 339
Rosenstock v. Tormey, 32 Md. 169; III, 125.....	68, 157

TABLE OF CASES REPORTED.

401

	PAGE.
Roshi's Appeal, 69 Penn. St. 462; VIII, 275.....	149
Ross v. Espy, 66 Penn. St. 481; V, 894.....	52, 159
Ross v. Mather, 51 N. Y. 108; X, 562.....	170, 293
Roundtree v. Baker, 52 Ill. 241; IV, 597.....	115, 323
Rowan v. State, 80 Wis. 129; XI, 559.....	108, 184, 187
Royce v. Guggenheim, 106 Mass. 201; VIII, 323.....	225
Rudy v. Ulrich, 69 Penn. St. 177; VIII, 238.....	360, 368
Ruhl v. Phillips, 48 N. Y. 125; VIII, 522.....	169
Russell v. Annable, 109 Mass. 72; XII, 665.....	59, 288, 335
Russell v. Carrington, 42 N. Y. 118; I, 498.....	310
Russell v. McCormick, 45 Ala. 587; VI, 707.....	112, 353
Rutherford v. Tracy, 45 Mo. 325; VIII, 104.....	123, 153
Ryan v. Harrow, 27 Iowa, 494; I, 302.....	238, 277
Ryan v. Ward, 48 N. Y. 204; VIII, 539.....	303
Salisbury v. Herchenroder, 106 Mass. 458; VIII, 354.....	176
Salt Springs Nat. Bank v. Wheeler, 48 N. Y. 492; VIII, 564.....	119
Sammons v. Holloway, 21 Mich. 162; IV, 465.....	325
Sampson v. Shaw, 101 Mass. 145; III, 327.....	113
Sanderson v. Caldwell, 45 N. Y. 398; VI, 105.....	318, 321
Sands v. New York Life Ins. Co., 50 N. Y. 626; X, 535.....	209
Sargent v. Currier, 49 N. H. 310; VI, 524.....	351
Sauer v. Schulenberg, 33 Md. 288; III, 174.....	288, 316
Savage v. Everman, 90 Penn. St. 315; X, 676.....	5, 218
Savage v. Howard Ins. Co., 52 N. Y. 502; XI, 741.....	188, 199
Savannah Nat. Bank v. Haskins, 101 Mass. 370; III, 373.....	57
Saylor v. Plaine, 31 Md. 158; I, 84.....	348, 368
Schmertz v. Shreeve, 62 Penn. St. 457; I, 499.....	287, 316
Schneider v. Evans, 25 Wis. 241; III, 56.....	75
Schneider v. The Provident Life Ins. Co., 24 Wis. 28; I, 157.....	187
Schnorr's Appeal, 67 Penn. St. 188; V, 415.....	149
Schofield v. The Homestead Co., 32 Iowa, 317; VII, 197.....	140, 353
School District in Medfield v. Boston, Hartford & Erie R. R. Co., 103 Mass. 552; III, 502.....	66
Schuchardt v. Hall, 36 Md. 590; XI, 514.....	46
Schuyler v. Smith, 51 N. Y. 309; X, 609.....	227
Schwerin v. McKie, 51 N. Y. 180; X, 581.....	360
Schuykill County v. Copley, 67 Penn. St. 386; V, 441.....	59, 169, 372
Scott v. Bush, 26 Mich. 418; XII, 311.....	327
Scott v. Harmon, 109 Mass. 237; XII, 685.....	23
Second Nat'l Bank v. Walbridge, 19 Ohio St. 419; II, 408.....	360
Security Fire Ins. Co. of N. Y. v. Kentucky Marine and Fire Ins. Co., 7 Bush. Ky. 81; III, 301.....	185, 188
Security Ins. Co. v. Fay, 22 Mich. 467; VII, 670.....	196
Seguin v. Peterson, 45 Vt. 255; XII, 194.....	181, 285
Seig v. Acord's Executor, 21 Gratt. 365; VIII, 605.....	232
Self v. Dunn, 42 Ga. 528; V, 544.....	61, 135

	PAGE
Shaffner v. Briggs, 86 Ind. 55; X, 1.....	124
Shannahan v. Commonwealth, 8 Bush. Ky. 468; VIII, 465	136
Shapely v. Abbott, 42 N. Y. 448; I, 548.....	155, 230
Sharman v. Howell, 40 Ga. 257; II, 576.....	27
Shaul v. Brown, 28 Iowa, 37; IV, 151.....	234
Shaw v. Aetna Ins. Co., 49 Mo. 578; VIII, 150.....	191
Shaw v. Coffin, 58 Me. 254; IV, 290	180
Shaw v. Spencer, 100 Mass. 882; I, 115.....	45, 128, 162, 277, 332, 350
Shearmann v. The Niagara Fire Ins. Co., 46 N. Y. 526; VII, 880....	199, 200
Sheehan v. Good Samaritan Hospital, 50 Mo. 155; XI, 412.....	265
Sheffield v. Ladue, 16 Minn. 888; X, 145.....	15
Shelburne Falls Nat'l Bank v. Townsley, 102 Mass. 177; III, 445.....	48
Sheldon v. Horton, 43 N. Y. 93; III, 669.....	47
Sheldon v. Sherman, 42 N. Y. 484; I, 569	4, 21, 144, 147
Sheppard v. Steele, 43 N. Y. 53; III, 660.....	106, 219, 253
Sherfy v. Argenbright, 1 Heisk. 128; II, 690.....	90
Sherley v. Billings, 8 Bush, 147; VIII, 451.....	248
Shields v. Lozear, 84 N. J. 496; III, 256	227, 256
Shipley v. Fifty Associates, 101 Mass. 251; III, 346.....	8, 225, 271, 279
Shipley v. Fifty Associates, 106 Mass. 194; VIII, 318.....	177, 225, 271, 279
Shreck v. Shreck, 82 Tex. 578; V, 251.....	243
Shumaker v. Schmidt, 44 Ala. 454; IV, 135.....	367
Shunk v. First Nat. Bank of Galion, 22 Ohio St. 508; X, 762.....	37
Simmons v. City of Camden, 26 Ark. 276; VII, 620.....	262
Simmons v. Thomas, Sheriff, etc., 43 Miss. 31; V, 470.....	239
Simonds v. Simonds, 108 Mass. 572; IV, 576.....	97, 245
Simonton v. Clark, 65 N. C. 525; VI, 752.....	52, 231, 232
Sims v. Cox, 40 Ga. 76; II, 560.....	116
Sims v. Rickets, 35 Ind. 181; IX, 679....	243
Sims v. State Ins. Co. of Hannibal, 47 Mo. 54; IV, 311.....	193, 195, 202
Sinks v. Reese, 19 Ohio St. 306; II, 897....	150
Sinton v. Boyd, 19 Ohio St. 30; II, 869.....	368
Sinton v. Steamboat R. R. Roberts, alias New Era, 84 Ind. 448; VII, 229..	209
Slack v. Kirk, 67 Penn. St. 380; V, 488.....	46
Slatten v. Des Moines Valley R. R. Co., 29 Iowa, 148; IV, 205.....	298
Smith v. Brazelton, 1 Heiskell, 44; II, 678.....	356
Smith v. Dorsey, 38 Ind. 451; X, 118.....	170
Smith v. Forehand, 100 Mass. 186; I, 94.....	104
Smith v. Hamilton, 20 Mich. 483; IV, 398.....	59
Smith v. Hill, 45 Vt. 90; XII, 189.....	237
Smith v. Miller, 43 N. Y. 171; III, 690.....	47
Smothers v. Hanks, 34 Iowa, 286; XI, 141.....	298
Snow v. Columbian Ins. Co., 48 N. Y. 624; VIII, 578.....	212
Snyder v. Fulton, 84 Md. 128; VI, 314.....	319, 323
Snyder v. People, 26 Mich. 106; XII, 302.....	138
Snyder v. Robinson, 35 Ind. 311; IX, 788....	219, 292

TABLE OF CASES REPORTED.

403

	PAGE.
Somers v. Schmidt, 24 Wis. 417; I, 191.....	132, 155, 302
Southern Dry Dock Co. v. Steamboat J. D. Perry, Captain Baird and Owners, 23 La. An. 39; VIII, 585.....	220
Southern Express Co. v. Caperton, 44 Ala. 101; IV, 118.....	77
Southern Express Co. v. Crook, 44 Ala. 468; IV, 140.....	77
Southwestern R. R. Co. v. Southern & Atlantic Telegraph Co., 46 Ga. 43; XII, 585.....	101, 152, 340
Southworth v. Old Colony & Newport Railway Co., 105 Mass. 342; VII, 528.....	270
Spaulds v. Barrett, 57 Ill. 289; XI, 10.....	147
Spaulding v. Chicago & Northwestern Railway Co. 80 Wis. 110; XI, 550..	165 275
Spencer v. Brower, 32 Tex. 663; V, 254.....	215, 359
Spencer v. Carr, 45 N. Y. 406; VI, 112.....	155
Spering's Appeal, 71 Penn. St. 11; X, 684.....	127
Spitler v. James, 32 Ind. 202; II, 334.....	49
Spooner v. Holmes, 103 Mass. 508; III, 491.....	59, 118, 332
Springer v. Drosch, 32 Ind. 436; II, 356.....	115, 156
Springfield Fire Ins. Co. v. Allen, 43 N. Y. 339; III, 711.....	203
Stapleton v. King, 33 Iowa, 28; XI, 109.....	159, 236
State, Auditor of, v. Atchison, Topeka and Santa Fe R. R. Co., 6 Kan. 500; VII, 575.....	107
State Bank v. McCoy, 69 Penn. St. 204; VIII, 246.....	43
State v. Branch, 68 N. C. 136; XII, 633.....	134, 172, 224
State v. Briggs, 9 R. I. 361; XI, 270.....	237
State ex rel. Kennedy v. Brunst, 26 Wis. 412; VII, 84.....	105, 232
State v. Carroll, 38 Conn. 449; IX, 409.....	284
State v. Cleaves, 59 Me. 298; VIII, 422.....	241, 371
State ex rel. Henderson v. County Court of Boone Co., 50 Mo. 317; XI, 415..	96
State ex rel. Circuit Attorney v. County Court of Saline Co., 51 Mo. 350; XI, 454.....	129
State v. Custer, 8 Heisk. 165; VIII, 8.....	90
State and De Guenther v. Douglass, 26 Wis. 428; VII, 87.....	105, 232
State v. Dolby, 49 N. H. 438; VI, 488.....	134
State v. Dowe, 27 Iowa, 273; I, 271.....	139
State ex rel. Stoutmeyer v. Duffy, 7 Nev. 342; VIII, 713.....	236, 316
State v. Dunlap, 65 N. C. 491; VI, 746.....	307
State of Florida ex rel. Bloxham v. Gibbs, 13 Fla. 55; VII, 233.....	236
State v. Franklin Falls Co. et al., 49 N. H. 240; VI, 513.....	166, 294
State v. Foley, 31 Iowa, 537; VII, 166.....	200
State ex rel. Lakey v. Garton, 32 Ind. 1; II, 315.....	323
State v. Gibson, 36 Ind. 339; X, 43.....	92, 236
State v. Grand Trunk Railway, 58 Me. 176; IV, 253.....	31, 84
State ex rel. Seeligman v. Hayes, 50 Mo. 84; XI, 403.....	324
State v. House, 65 N. C. 315; VI, 744.....	17
State v. Hussey, 60 Me. 410; XI, 209.....	134

	PAGE.
State v. Jones, 50 N. H. 369; IX, 242	136, 182
State ex rel. Coons v. Judge of the Thirteenth Judicial District, 23 La. An. 29; VIII, 588.....	307
State v. Larkin, 49 N. H. 86; VI, 456.....	135
State v. Leach, 60 Me. 58; XI, 173.....	284
State v. Linkhaw, 69 N. C. 214; XII, 645.....	279
State v. Martin, 80 Wis. 216; XI, 567.....	135, 278
State etc. v. Mayor and Common Council of City of Newark, 85 N. J. 157; X, 228.....	266
State v. McCord, 8 Kans. 232; XII, 469.....	135, 278
State v. Milwaukee Gas Light Co., 29 Wis. 454; IX, 598.....	107
State of Missouri ex rel. Judge v. Gatzweiler, 49 Mo. 17; VIII, 119	93
	283, 357
State of Missouri ex rel. Neal v. Saline County Court, 48 Mo. 390; VIII, 108.....	268
State v. Morphy, 38 Iowa, 270; XI, 122.....	136, 223, 277
State v. Mott, 16 Minn. 472; X, 152.....	135, 323
State ex rel. Schuet v. Murray, 28 Wis. 96; IX, 489.....	282
State v. Nichols, 26 Ark. 74; VII, 600.....	286
State v. Noyes, 36 Conn. 80; IV, 37.....	157
State v. O'Toole, 3 Heisk. 165; VIII, 8.....	90
State v. Patterson, 45 Vt. 808; XII, 200.....	136, 157, 348
State v. Pepper, 68 N. C. 259; XII, 637.....	141
State v. Pike, 49 N. H. 399; VI, 538	184, 187, 189, 161, 182
State v. Pottmeyer, 38 Ind. 402; V, 224.....	179
State v. Rand, 81 N. H. 361; XII, 127.....	372
State v. Rushing, 69 N. C. 29; XII, 641.....	141
State ex rel. Atherion v. Sherwood, 15 Minn. 221; II, 116.....	151, 235
State v. Smith, 49 N. H. 155; VI, 480.....	134, 137
State ex rel. Clark v. Stanley, 66 N. C. 59; VIII, 488.....	283
State v. Steamship "Constitution," 42 Cal. 578; X, 303.....	95
State v. Stratton, 27 Iowa, 420; I, 282.....	51, 167
State ex rel. McCurdy v. Tappan, Town Clerk, 29 Wis. 664; IX, 622....	97
	202, 259, 331
State ex rel. Oliver v. Warmouth, 23 La. An. 1; II, 712.....	172, 235
State v. Weir, 38 Iowa, 134; XI, 115.....	107, 254
State v. Whittemore, 50 N. H. 245; IX, 196.....	141, 221
Statham v. N. Y. Life Ins. Co., 45 Miss. 581; VII, 737.....	210
St. Charles, City of v. Nolle, 51 Mo. 122; XI, 440.....	260
Stearns and Wife v. Sampson, 59 Me. 568; VII, 442.....	227
Steele v. Burkhardt, 104 Mass. 59; VI, 191....	277
Steines v. Franklin County, 48 Mo. 167; VIII, 87.....	268
Steinweg v. Erie Railway, 48 N. Y. 123; III, 678.....	65, 273
Sterling v. Warden, 51 N. H. 217; XII, 80.....	228, 229, 294, 347
Stevens v. Mechanics' Savings Bank, 101 Mass. 109; III, 825.....	29
Stevens v. Patterson & Newark R. R. Co., 84 N. J. 532; III, 269.....	297, 365

TABLE OF CASES REPORTED.

405

	PAGE.
Stevenson v. Loehr, 57 Ill. 509; XI, 86.....	853
Stewart v. Campbell, 58 Me. 489; IV, 296.....	828
Stewart & Cutts v. Mordecai, 40 Ga. 1; II, 555.....	805
Stewart v. Flowers, 44 Miss. 513; VII, 707.....	22
Stewart v. People, 23 Mich. 63; IX, 78.....	187, 316
Stewart v. Supervisors of Polk Co., 30 Iowa, 9; I, 288.....	97, 102, 152, 267 380, 340
Stickney v. Jordan, 58 Me. 106; IV, 251.....	58
Stilphen v. Stilphen, 58 Me. 506; IV, 305.....	245
Stirling v. Nevassa Phosphate Co., 35 Md. 128; VI, 373.....	817
Stitzell v. Reynolds, 67 Penn. St. 54; V, 396.....	818, 821
St. Luke's Home, etc., v. American Association for Indigent Females, etc., 52 N. Y., 191; XI, 697.....	871
Stockwell v. Campbell, 39 Conn. 363; VII, 393.....	167
Stoddard v. Harrington, 100 Mass. 87; I, 92.....	188
Stoddard v. Locke, 43 Vt. 574; V, 308.....	80
Stoddard v. Penniman, 106 Mass. 366; XI, 363.....	50
Stokes v. State of Georgia and County of Lee, 46 Ga. 412; XII, 588..	81, 389
Stone v. Sanborn, 104 Mass. 319; VI, 238.....	288
Stoneman v. Pyle, 35 Ind. 103; IX, 637.....	44
Stoops v. Smith, 100 Mass. 63; I, 85.....	158
Stout v. Folger, 34 Iowa, 71; XI, 188.....	11
Street and Wife v. Inhabitants of Holyoke, 105 Mass. 89; VII, 500.	176
Sturdivant v. Hull, 59 Me. 172; VIII, 409.....	43
Sturges v. Keith, 57 Ill. 451; XI, 28.....	144
Sublett v. Bedwell, 47 Miss. 266; XII, 388.....	151
Succession of Jesse W. Wilder, 23 La. An. 219, II, 721.....	111, 115, 242
Succession of Perennilhet — On Opposition of Mrs. Hauths, 23 La. An. 294; VIII, 595.....	109
Sullivan v. Sullivan, 106 Mass. 474; VIII, 356.....	242, 367
Summers & Brannen v. Roos & Co., 42 Miss. 749; II, 658.....	349
Summers v. Vaughan, 35 Ind. 833; IX, 741.....	814
Sunderlin v. Bradstreet, 46 N. Y. 188; VII, 822.....	320
Sutton v. Town of Wauwatosa, 29 Wis. 21; IX, 534.....	333
Sutton and Wife v. Askew, 66 N. C. 172; VIII, 500.....	246
Swarthout v. N. J. Steamboat Co., 48 N. Y. 209; VIII, 541.....	81
Sweet v. Shumway, 102 Mass. 365; III, 471.....	158, 313
Sweet v. Cutts, 50 N. H. 439; IX, 276.....	364
Sweet v. Dutton, 109 Mass. 589; XII, 744.....	350
Sweetland v. Illinois and Mississippi Telegraph Co., 27 Iowa, 433; I, 235, 13 341	
Swepson v. Rouse, 65 N. C. 34; VI, 785.....	28
Sykes v. Town of Pawlet, 43 Vt. 446; V, 295.....	178
Symonds v. Barnes, 59 Me. 191; VIII, 418.....	80
Tabor v. Missouri Valley R. R. Co., 46 Mo. 353; II, 517.....	270, 302

	PAGE
Taft, Trustee, v. Hartford, Providence and Fiahkill R. R. Co., 8 R. I. 310; V, 575.....	128, 147, 331
Taintor v. Taylor, 36 Conn. 243; IV, 58.....	20, 337
Tannatt v. Rocky Mountain Nat. Bank, 1 Col. 278; IX, 156.....	15
Tarble, In re, 25 Wis. 390; III, 85.....	231
Taylor v. Atchison, 54 Ill. 196; V, 118.....	53
Taylor v. Curry, 109 Mass. 36; XII, 661.....	44
Taylor, ex'r, v. Staples et al., Trustees, 8 R. I. 170; V, 556.....	355
Taylor v. Grand Trunk Railway Co., 48 N. H. 304; II, 239.....	81, 84, 142
Taylor v. Miles, 5 Kan. 498; VII, 558.....	340
Taylor v. Peckham, Treasurer, 8 R. I. 349; V, 578.....	175, 264
Taylor v. Shew, 39 Cal. 586; II, 478.....	13, 218
Taylor v. Short, 27 Iowa, 361; I, 280.....	255
Taylor v. Taylor, 63 Penn. St. 431; III, 565.....	369
Tedder v. Odom, 2 Heisk. 68; V, 25.....	45, 358
Tegler v. Shipman, 33 Iowa, 194; XI, 118.....	112, 314
Thomas v. Taylor, 43 Miss. 651; II, 625.....	90
Thompson v. Fargo, 49 N. Y. 188; X, 342.....	6, 78, 93
Thompson v. Kelly, 101 Mass. 291; III, 353.....	6, 38
Thompson v. Mankin, 26 Ark. 586; VII, 628.....	92
Thompson v. North Missouri R. R. Co., 51 Mo. 190; XI, 442.....	272
Thompson v. Waters, 25 Mich. 214; XII, 242.....	126
Thompson v. Wharton, 7 Bush. Ky. 563; III, 306.....	114
Thorn v. Knapp, 42 N. Y. 474; I, 561.....	238
Thorsen v. Schooner J. B. Martin, 26 Wis. 438; VII, 91.....	219
Thurston v. City of St. Joseph, 51 Mo. 510; XI, 463.....	264
Thwing v. Great Western Ins. Co., 130 Mass. 401; IV, 567.....	314
Tillinghast, adm'r, v. Wheaton, ex'r, 8 R. I. 536; V, 621.....	39, 171
Tilton v. Miller & Co., 66 Penn. St. 388; V, 373.....	315
Tisher v. Beckwith, 30 Wis. 55; XI, 546.....	123
Tobin v. Portland, Saco and Portland R. R. Co., 59 Me. 183; VIII, 415.....	300
Toledo, etc., R. R. Co v. Baddely, 54 Ill. 19; V, 71.....	82, 84
Toledo, etc., v. Hammond, 33 Ind. 379; V, 321.....	84, 86
Toledo, Peoria & Warsaw Railway Co. v. Merriman, 53 Ill. 123; IV, 590.....	74
Toledo, Peoria & Warsaw Railway Co. v. Pindar, 53 Ill. 447; V, 57.....	273
	374, 395
Tombs v. Alexander, 101 Mass. 255; III, 349.....	60
Tomlin v. Dubuque, Bellevue & Mississippi R. R. Co., 33 Iowa, 106; VII, 176.....	365
Tootle v. Clifton, 23 Ohio St. 247; X, 732.....	10, 364
Torbush v. City of Norwich, 33 Conn. 235; IX, 395.....	7, 265
Town of Depere v. Town of Bellevue, 31 Wis. 120; XI, 603.....	258
Town of Waltham v. Kemper, 55 Ill. 346; VIII, 652.....	7, 175, 261
Trafton v. Hawes, 103 Mass. 533; III, 494.....	130
Traub v. Milliken, 57 Maine, 68; II, 14.....	16
Tripp v. Hascelg, 20 Mich. 254; IV, 338.....	123, 153

TABLE OF CASES REPORTED.

407

	PAGE.
Troy and Boston R. R. Co. v. Potter, 43 Vt. 265; I, 325.....	297
True v. International Telegraph Co., 60 Me. 9; XI, 156.....	341, 348
Trustees of First Evangelical Church v. Walsh, 57 Ill. 363; XI, 21.....	178
Trustees v. Garvey, 53 Ill. 401; V, 51.....	333
Tuesley v. Robinson, 103 Mass. 558; IV, 575.....	257
Tuthill v. Scott, 43 Vt. 525; V, 301.....	10, 363
Tuttle v. Hoag, 46 Mo. 83; II, 481.....	233
Tyler v. Beacher, 44 Vt. 643; VIII, 396.....	101
Union Nat'l Bank v. Sixth Nat'l Bank, 43 N. Y. 452; III, 718.....	82
Union Pacific Railway Co. v. Nichols, 8 Kans. 505; XII, 475.....	78
United Life, Fire and Marine Ins. Co. v. Foote, 23 Ohio St. 340; X, 735..	193
United States Fire and Marine Ins. Co. v. Kimberly, 34 Md. 234; VI, 325,	194
Upton v. Archer, 41 Cal. 35; X, 266.....	120
Van Etta v. Evenson, 33 Wis. 33; IX, 486.....	120
Vater v. Lewis, 36 Ind. 238; X, 29.....	42
Vigoreaux v. Lime Rock Ins. Co., 59 Me. 457; VIII, 423.....	212
Village of Delhi v. Youmans, 45 N. Y. 363; VI, 100.....	364
Vivian v. Otis, 24 Wis. 518; I, 199.....	233
Vogel v. Melins, 31 Wis. 306; XI, 603.....	339
Volts, Ex parte, 37 Ind. 175; X, 36.....	19
Voorhies v. Frisbie, 25 Mich. 476; XII, 291.....	9, 25, 221
Vose v. Dolan, 103 Mass. 155; XI, 331.....	120
Wade v. Chaffee, 8 R. I. 234; V, 572.....	19, 133, 293
Wagner v. Cleveland and Toledo R. R. Co., 23 Ohio St. 563; X, 770.	167, 301
Wait v. Pomeroy, 20 Mich. 425; IV, 395.....	51, 58
Wakeman v. Dalley, 51 N. Y. 27; X, 551.....	127, 169
Walker v. City of Cincinnati, 21 Ohio St. 14; VIII, 24.....	103, 106, 233
Walker v. Crawford, 56 Ill. 444; VIII, 701.....	52, 160
Walker v. Egbert, 29 Wis. 194; IX, 543.....	53
Walker v. Herring, 21 Gratt. 678; VIII, 616.....	23, 327
Walker v. Old Colony and Newport Railway Co., 103 Mass. 10; IV, 509..	297
	298
Walker v. Stetson, 19 Ohio St. 400; II, 405.....	46
Walker v. Tirrel, 101 Mass. 257; III, 353.....	60
Wallace & Park v. Jewell, 21 Ohio St. 163; VIII, 43.....	44, 49
Wallerstein v. Columbian Ins. Co., 44 N. Y. 204; IV, 664.....	213
Walls v. Bailey, 49 N. Y. 464; X, 407.....	163
Walsh v. Aetna Life Ins. Co., 30 Iowa, 133; VI, 664.....	204, 206
Walsh v. Powers, 43 N. Y. 23; III, 654.....	180
Waltham, Town of, v. Kemper, 55 Ill. 346; VIII, 653.....	7, 175, 261
Ward v. McKensie, 33 Tex. 297; VII, 261.....	261
Ward v. N. Y. Cent. R. R. Co., 47 N. Y. 29; VII, 405.....	63, 145
Ward v. State, 31 Md. 279; I, 50.....	94, 229, 329, 339
Waring v. The Indemnity Fire Ins. Co., 45 N. Y. 606; VI, 146.....	191
Warner v. Heiden, 33 Wis. 517; IX, 515.....	7, 229
Warner v. N. Y. Cent. R. R. Co., 53 N. Y. 437; XI, 724.....	224

	PAGE.
Warren v. Chambers, 25 Ark. 120; IV, 28.....	5, 365
Warren v. Davenport Fire Ins. Co., 31 Iowa, 464; VII, 160.....	1, 191
Warren v. Slade, 23 Mich. 1; IX, 70.....	233
Washington Avenue, 69 Penn. St. 352; VIII, 255.....	265
Washington Fire Ins. Co. of Baltimore and Atlantic Fire and Marine Ins. Co. v. Kelly, 32 Md. 421; III, 149.....	192, 199, 208
Washington Ins. Co. v. White, 103 Mass. 238; IV, 543.....	213
Watertown, Inhabitants of, v. Mayo, 109 Mass. 815; XII, 694.....	104, 259
Way v. Howe, 108 Mass. 502; XI, 386.....	30
Weed v. Larkin, 54 Ill. 489; V, 149.....	131
Weatherly v. Smith, 30 Iowa, 181; VI, 663.....	351
Webb v. Rome, Watertown and Ogdensburg R. R. Co., 49 N. Y. 420; X, 839.....	273, 274, 295
Weber v. Morris & Essex R. R. Co., 35 N. J. 409; X, 253....	144, 188
Webster v. Webster, 58 Me. 189; IV, 253.....	43
Weed v. Barney, 45 N. Y. 344; VI, 96.....	18
Weise v. Smith, 3 Or. 445; VIII, 621.....	365
Weisenberg v. City of Appleton, 26 Wis. 56; VII, 89.....	143, 175, 263
Welch v. Durand, 36 Conn. 182; IV, 55.....	4, 12, 347
Welch v. Hotchkiss, 39 Conn. 140; XII, 333.....	260
Welsh v. Sage, 47 N. Y. 143; VII, 423.....	57, 59, 332
Weller v. Eames, 15 Minn. 461; II, 150.....	180
Wells v. Calman, 107 Mass. 514; IX, 65.....	119, 353
Wells, Exr., v. Mann, 45 N. Y. 327; VI, 98.....	110, 295, 336
Welts v. Conn. Mut. Life Ins. Co., 48 N. Y. 34; VIII, 518.....	203
Wemple v. Knopf, 15 Minn. 440; II, 147.....	169
Westbrook Manuf. Co. v. Grant, 60 Me. 88; XI, 181.....	30
Western Union Telegraph Co. v. Buchanan, 35 Ind. 429; IX, 744.....	343
Western Union Telegraph Co. v. Graham, 1 Colorado, 230; XI, 136.....	341
	343
Wetherbee v. Green, 23 Mich. 311; VII, 653.....	8
Wheat v. Cross, 31 Md. 99; I, 98.....	109
Wheaton v. Pike, 9 R. I. 132; XI, 227.....	56
Wheeler v. City of Cincinnati, 19 Ohio St. 19; II, 368.....	7, 264
Wheeler v. Mather, 56 Ill. 241; VIII, 633.....	354
Wheeler v. Warner, 47 N. Y. 519; VII, 478.....	45, 52, 233
Whitaker v. Hartford, Providence & Fishkill R. R. Co., 8 R. I. 47; V, 547.....	215
Whitaker v. Whitaker, 52 N. Y. 368; XI, 711.....	243
Whitbeck v. Holland, 45 N. Y. 13; VI, 23.....	77, 78, 162
Whitcher v. Whitcher, 49 N. H. 176; VI, 486.....	18
White v. Carroll, 42 N. Y. 181; I, 503.....	319, 372
White v. County of Bond, 58 Ill. 297; XI, 65.....	7, 175, 261
White v. Graves, 107 Mass. 325; IX, 38.....	161, 246
White v. Republic Fire Ins. Co., 57 Maine, 91; II, 23.....	187
White v. White, 105 Mass. 325; VII, 526.....	237
Whitehurst v. Gaskill, 69 N. C. 449; XII, 655.....	255, 339

TABLE OF CASES REPORTED.

409

	PAGE.
Whitney v. Merchants' Union Express Co., 104 Mass. 153; VI, 207..	13, 16
Whitney v. Ragsdale, 83 Ind. 107; V, 185.....	88
Whiting v. Sheboygan and Fond du Lac R. R. Co., 25 Wis. 167; III, 80 ..	103
	267, 340
Whiton v. Chicago and North Western Railway Co., 25 Wis. 424; III, 101,	96
	304
Widoe v. Webb, 20 Ohio St. 481; V, 664.....	45
Wilhelm v. Fimple, 81 Iowa, 481; VII, 117.....	354
Wilkins v. Earle, 44 N. Y. 172; IV, 655.....	183
Wilkinson v. Connecticut Mut. Life Ins. Co., 80 Iowa, 119; VI, 657.....	207
Wilkinson v. Tously, 16 Minn. 299; X, 189	9, 89
Wilkinson v. Wait, 44 Vt. 508; VIII, 891.....	28, 219
Willets v. Sun Mut. Ins. Co., 45 N. Y. 45; VI, 81	109, 189, 295
Williams v. Albany City Ins. Co., 19 Mich. 451; II, 95.....	195
Williams v. Bemis, 108 Mass. 91; XI, 818	11
Williams v. Haynes, 27 Iowa, 251; I, 268.....	110
Williams v. Merritt, 108 Mass. 184; IV, 521	27
Williams v. Powell, 101 Mass. 467; III, 896	21
Williams v. Robinson, 42 Vt. 658; I, 859	61, 367
Williams v. Roger Williams' Ins. Co., 107 Mass. 377; IX, 41.....	193
Williams v. Stein, 88 Ind. 89; X, 97 ..	107, 151
Willmering v. McGaughey, 80 Iowa, 205; VI, 673.....	112, 159, 161
Wills v. Home Ins. Co., 28 Iowa, 545; IV, 180... ..	305
Wilson v. City of New Bedford, 108 Mass. 261; XI, 852..	4, 10, 269, 279, 363
	364
Wilson v. Forder, 20 Ohio St. 89; V, 637.....	289
Wilson v. Grand Trunk Railway, 57 Me. 188; II, 26.....	86
Wilson v. Wilson, 37 Md. 1; XI, 518.....	314
Wiltbank's Appeal, 64 Penn. St. 256; III, 585.....	350
Wilton v. Middlesex R. R. Co., 107 Mass. 108; IX, 11	248
Winner v. Penniman, 35 Md. 163; VI, 885	43
Winnesheik Ins. Co. v. Holzgrafe, 53 Ill. 516; V, 64.....	188
Winslow v. Vermont & Massachusetts R. R. Co., 42 Vt. 700; I, 865 ..	66, 70
Woburn, Inhab. of, v. Henshaw, 101 Mass. 193; III, 833	178, 371
Wolf v. Western Union Telegraph Co., 62 Penn. 88; I, 887.....	342
Wonder v. Baltimore & Ohio R. R. Co., 32 Md. 411; III, 143	252, 301
Woodman v. Nottingham, 49 N. H. 887; VI, 526.. ..	143
Woodruff v. Scruggs, 27 Ark. 26; XI, 777.....	351
Woodward v. Leavitt, 107 Mass. 453; IX, 49	223, 278
Woodward v. Powers, 105 Mass. 108; VII, 508....	145
Woodworth v. Bennett, 43 N. Y. 273; III, 706.....	114
Wood v. Milwaukee & St. Paul Railway Co., 27 Wis. 541; IX, 465.....	73
Woods v. Hilderbrand, 46 Mo. 284; II, 513	16, 123, 150, 255
Woods v. Wilder, 43 N. Y. 164; III, 684	54, 116, 289, 358
Worthington v. Scribner, 109 Mass. 487; XII, 786.....	295
Wright v. Winningham, 2 Helsk. 254; V, 85.....	357

	PAGE.
Wyckoff v. The Queens Co. Ferry Co., 52 N. Y. 82; XI, 650.....	165
Young v. Lathrop, 67 N. C. 63; XII, 608.....	169
Young v. Ship Princess Royal, 23 La. An. 388; II, 731.....	220
Young v. Stevens, 48 N. H. 183; II, 202....	116
Youngblood v. Vastine, 46 Mo. 289; II, 509.....	123
Zeisweiss v. James, 63 Penn. St. 465; III, 558....	870
Zimmerman v. Andersop, 67 Penn. St. 421; V, 447.....	44
Zinn v. New Jersey Steamboat Co., 49 N. Y. 442; X, 403.....	67
Zollar v. Janvrin, 49 N. H. 114; VI, 469.....	28
Zuchtmann v. Roberts, 109 Mass. 53; XII, 663.....	812

For Not To Be Taken
From the Room
reference

